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**APPENDIX**

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**REPORTS OF STANDING COMMITTEES**

The following committee reports were received by the Secretary of the Senate:

**May 10, 1993**

**NATURAL RESOURCES — C.S.H.B. 1962, C.S.S.B. 999, C.S.S.B. 1435**

**STATE AFFAIRS — H.B. 479, H.B. 458, H.B. 535, H.B. 211, H.B. 78, H.B. 161 (Amended), H.B. 1852, H.B. 829, H.B. 167, H.B. 476, H.B. 1298, H.B. 370, H.B. 1011, C.S.S.B. 100**

**FINANCE — H.B. 2050, C.S.H.B. 891, H.B. 366, H.B. 394, H.B. 132, S.B. 1487, C.S.S.B. 1330**

**SUBCOMMITTEE ON ELECTIONS AND ETHICS — H.B. 565, H.B. 790, H.B. 76, H.B. 689, C.S.H.B. 162**

**SENT TO GOVERNOR**

(May 10, 1993)

**S.B. 175**

**S.B. 201**

**S.B. 654**

**S.B. 1075**

**SIXTY-FOURTH DAY**

(Tuesday, May 11, 1993)

The Senate met at 10:30 a.m. pursuant to adjournment and was called to order by Senator Turner.

The roll was called and the following Senators were present: Armbrister, Barrientos, Bivins, Brown, Carriker, Ellis, Haley, Harris of Tarrant, Harris of Dallas, Henderson, Leedom, Lucio, Luna, Madla, Moncrief, Montford, Nelson, Parker, Patterson, Ratliff, Rosson, Shapiro, Shelley, Sibley, Sims, Truan, Turner, Wentworth, West, Whitmire, Zaffirini.

A quorum was announced present.

The Reverend Doug Richnow, Assistant Rector, St. Matthew's Episcopal Church, Austin, offered the invocation as follows:

Gracious Father in heaven, who has created all things, pour out a special measure of Your creative power on our Lieutenant Governor, on the men and women of the Texas Senate, and on all

the staff who support them as they are pressed in these last few weeks to complete the critical responsibilities they have been given.

Grant to each one the creative wisdom to find equitable solutions to the problems facing them, give them courage and strength to act according to Your will, and fill them with a commitment to selflessly serve the people of this great state.

We pray these things in the name of our heavenly Father.  
Amen.

On motion of Senator Harris of Dallas and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

**CO-AUTHOR OF SENATE BILL 994**

On motion of Senator Nelson and by unanimous consent, Senator Truan will be shown as Co-author of S.B. 994.

**CO-AUTHOR OF SENATE BILL 1226**

On motion of Senator Bivins and by unanimous consent, Senator Lucio will be shown as Co-author of S.B. 1226.

**CO-AUTHOR OF SENATE BILL 1377**

On motion of Senator Ratliff and by unanimous consent, Senator Bivins will be shown as Co-author of S.B. 1377.

**CO-AUTHOR OF SENATE BILL 1435**

On motion of Senator Lucio and by unanimous consent, Senator Truan will be shown as Co-author of S.B. 1435.

**CO-SPONSOR OF HOUSE BILL 23**

On motion of Senator Shelley and by unanimous consent, Senator West will be shown as Co-sponsor of H.B. 23.

**CO-SPONSOR OF HOUSE BILL 1433**

On motion of Senator Harris of Tarrant and by unanimous consent, Senator Rosson will be shown as Co-sponsor of H.B. 1433.

**CO-SPONSOR OF HOUSE BILL 2153**

On motion of Senator West and by unanimous consent, Senator Rosson will be shown as Co-sponsor of H.B. 2153.

**CO-SPONSOR OF HOUSE BILL 2499**

On motion of Senator Montford and by unanimous consent, Senator Carriker will be shown as Co-sponsor of H.B. 2499.

**CO-SPONSOR OF HOUSE BILL 2538**

On motion of Senator West and by unanimous consent, Senator Rosson will be shown as Co-sponsor of H.B. 2538.

**CO-SPONSORS OF HOUSE BILL 2800**

On motion of Senator Shapiro and by unanimous consent, Senators Harris of Dallas, Leedom, and Moncrief will be shown as Co-sponsors of **H.B. 2800**.

**PERMISSION TO INTRODUCE BILLS**

On motion of Senator Harris of Dallas and by unanimous consent, Article III, Section 5 of the Texas Constitution and Senate Rule 7.07(b) were suspended to permit the introduction of the following bills:

**S.B. 1490**

**S.B. 1491**

**SENATE BILLS AND RESOLUTIONS ON FIRST READING**

The following bills and resolutions were introduced, read first time, and referred to the committees indicated:

**S.C.R. 89** by Ellis Natural Resources  
Directing the Texas Air Control Board or its successor agency to conduct a study to determine the appropriate manner of implementing and funding a program or programs to assist low-income persons to comply with a federally mandated vehicle emissions inspection and maintenance program established in an air quality non-attainment area.

**S.C.R. 90** by Barrientos Administration  
Granting American Health Advisors, Inc., permission to sue the State of Texas, the University of Texas System, the University of Texas Health Science Center at Tyler, the University of Texas Medical Branch at Galveston, the University of Texas M.D. Anderson Cancer Center and those acting on behalf of such components of the University of Texas System as agents and employees thereof.

**S.C.R. 91** by Nelson Administration  
Requiring the Texas Education Agency driver education courses in the State of Texas to include instruction on the dangers and penalties of operating a motor vehicle while intoxicated.

**S.B. 1490** by Montford Economic Development  
Relating to the provision of utility service to certain political subdivisions.

**S.B. 1491** by Sibley Natural Resources  
Relating to the reclamation of land after the mining of sand, gravel, aggregate rock, limestone and other related materials.

**HOUSE BILLS AND RESOLUTION ON FIRST READING**

The following bills and resolution received from the House were read first time and referred to the committees indicated:

**H.C.R. 106** to Committee on Administration.

**H.B. 70** to Committee on State Affairs.

**H.B. 209** to Committee on Economic Development.

**H.B. 361** to Committee on Finance.

H.B. 495 to Committee on Economic Development.  
H.B. 605 to Committee on Criminal Justice.  
H.B. 610 to Committee on Intergovernmental Relations.  
H.B. 641 to Committee on State Affairs.  
H.B. 667 to Committee on State Affairs.  
H.B. 710 to Committee on State Affairs.  
H.B. 722 to Committee on Jurisprudence.  
H.B. 798 to Committee on Criminal Justice.  
H.B. 831 to Committee on Jurisprudence.  
H.B. 931 to Committee on Jurisprudence.  
H.B. 937 to Committee on Economic Development.  
H.B. 957 to Committee on Jurisprudence.  
H.B. 979 to Committee on Jurisprudence.  
H.B. 1009 to Committee on Administration.  
H.B. 1047 to Committee on State Affairs.  
H.B. 1092 to Committee on Criminal Justice.  
H.B. 1135 to Committee on State Affairs.  
H.B. 1177 to Committee on Economic Development.  
H.B. 1185 to Committee on Intergovernmental Relations.  
H.B. 1207 to Committee on Finance.  
H.B. 1213 to Committee on Economic Development.  
H.B. 1268 to Committee on Jurisprudence.  
H.B. 1445 to Committee on State Affairs.  
H.B. 1461 to Committee on Economic Development.  
H.B. 1494 to Committee on Jurisprudence.  
H.B. 1544 to Committee on Economic Development.  
H.B. 1563 to Committee on Natural Resources.  
H.B. 1673 to Committee on Intergovernmental Relations.  
H.B. 1680 to Committee on Health and Human Services.  
H.B. 1924 to Committee on Economic Development.  
H.B. 2079 to Committee on Natural Resources.  
H.B. 2333 to Committee on Education.  
H.B. 2446 to Committee on Natural Resources,  
Subcommittee on Agriculture.  
H.B. 2564 to Committee on Natural Resources.  
H.B. 2813 to Committee on Finance.  
H.B. 2820 to Committee on Natural Resources.  
H.B. 2825 to Committee on Jurisprudence.  
H.B. 2826 to Committee on Jurisprudence.  
H.B. 2845 to Committee on Intergovernmental Relations.  
H.B. 2853 to Committee on Natural Resources.  
H.B. 2862 to Committee on Natural Resources.

#### MESSAGE FROM THE HOUSE

House Chamber  
May 11, 1993

Mr. President: I am directed by the House to inform the Senate that the House has passed the following:



The House has granted the request of the Senate and appointed the following conferees for **S.B. 82**: Representatives Junell, Chair; Craddick, Alexander, Moreno, and Bomer.

The House has concurred in Senate amendments to **H.B. 71** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 196** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 241** by a vote of 137 Ayes, 0 Noes, 1 Present-not voting.

The House has concurred in Senate amendments to **H.B. 261** by a vote of 142 Ayes, 0 Noes, 1 Present-not voting.

The House has concurred in Senate amendments to **H.B. 294** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 600** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 608** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 696** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 781** by a vote of 145 Ayes, 0 Noes, 1 Present-not voting.

The House has concurred in Senate amendments to **H.B. 811** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 842** by a vote of 135 Ayes, 0 Noes, 1 Present-not voting.

The House has concurred in Senate amendments to **H.B. 1173** by a vote of 138 Ayes, 0 Noes, 1 Present-not voting.

The House has concurred in Senate amendments to **H.B. 1335** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1920** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 2498** by a non-record vote.

The House has adopted the conference committee report on **S.B. 830** by a vote of 138 Ayes, 0 Noes, 1 Present-not voting.

**H.J.R. 21**, Proposing a constitutional amendment to abolish the office of county surveyor in Jackson County.

**H.J.R. 22**, Proposing a constitutional amendment to abolish the office of county surveyor in McLennan County.

**H.J.R. 37**, Proposing a constitutional amendment to provide for the abolition of the office of county surveyor.

**H.J.R. 91**, Proposing a constitutional amendment authorizing the commissioner of the General Land Office to issue mineral patents for certain university fund land held in good faith under color of title for at least 50 years.

**H.J.R. 112**, Proposing a constitutional amendment to authorize an increase in the tax rate limit for rural fire prevention districts.

**H.C.R. 139**, Recognizing and congratulating Valero Energy Corporation for its receipt of the 1992 Spirit of America Award by the United Way.

**H.B. 1377**, Relating to the return of a warrant or check issued by a county.

**H.B. 1626**, Relating to a requirement that the Texas Commission on Alcohol and Drug Abuse provide alternatives for children at risk of selling controlled substances.

**H.B. 1896**, Relating to agreements with other states regarding the issuance of permits for the transportation of a vehicle and its load or a combination of vehicles and load that exceed legal size or weight limitations.

**H.B. 1942**, Relating to distribution of funds for mass transportation.

**H.B. 2206**, Relating to open records requests for inmates.

**H.B. 2410**, Relating to the operation of driver training schools.

**H.B. 2456**, Relating to the operation of a toll free crime stoppers telephone service for areas of the state not served by a local crime stoppers program.

**H.B. 2749**, Relating to the compensation for non-certified papers.

**H.B. 2750**, Relating to the specification for legal papers.

**H.B. 2751**, Relating to certified papers.

Respectfully,

BETTY MURRAY, Chief Clerk  
House of Representatives

#### MESSAGE FROM THE GOVERNOR

The following Message from the Governor was read and was referred to the Committee on Nominations:

Austin, Texas  
May 10, 1993

TO THE SENATE OF THE SEVENTY-THIRD LEGISLATURE,  
REGULAR SESSION:

I ask the advice, consent, and confirmation of the Senate with respect to the following appointment:

TO BE ADJUTANT GENERAL OF TEXAS for a term to expire  
February 1, 1995:

MAJOR GENERAL SAM C. TURK  
Box 5218 Camp Mabry  
Austin, Texas 78763

General Turk is being reappointed.

Respectfully submitted,  
/s/Ann W. Richards  
Governor of Texas

#### BILLS SIGNED

The Presiding Officer announced the signing of the following enrolled bills in the presence of the Senate after the captions had been read:

S.B. 24	S.B. 846
S.B. 126	S.B. 885
S.B. 191	S.B. 1022
S.B. 311	S.B. 1144
S.B. 454	S.B. 1160
S.B. 570	S.B. 1322
S.B. 576	S.B. 1362
S.B. 830	
S.B. 931 (Signed subject to Art. III, Sec. 49a of the Constitution)	

#### CAPITOL PHYSICIAN

The Presiding Officer recognized Senator Zaffirini, who presented Dr. Jose Salinas of Hondo as the "Doctor for the Day."

Dr. Salinas, participating in the "Capitol Physician" program sponsored by the Texas Academy of Family Physicians, was made welcome by the Senate.

#### GUESTS PRESENTED

Senator Brown was recognized and introduced to the Senate staff members from the district offices of Senators Bivins, Nelson, Patterson, Shapiro, Wentworth, and Brown.

The Senate welcomed its guests.

#### SENATE BILL 813 WITH HOUSE AMENDMENTS

Senator Truan called S.B. 813 from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

#### Committee Amendment No. 1

Amend S.B. 813 in Section 2, by adding a new Sec. 11C and 11D to read as follows:

Sec. 11C. EXEMPTION OF PUBLIC EMPLOYEES. Nothing in this Act shall require a person employed by a political subdivision who, in the person's capacity as a public employee, acts as a backflow prevention

device specialist or water supply protection specialist to have license endorsements under Section 11A or 11B.

Sec. 11D. EXEMPTION OF PUBLIC UTILITY EMPLOYEES. Nothing in this Act shall require a person employed by a public utility as defined by Section 3(c) of the Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes) who, in the course of their employment, acts as a backflow prevention device specialist or water supply protection specialist to have license endorsements under Section 11A or 11B.

**Committee Amendment No. 2**

Amend S.B. 813 as follows:

- (1) Strike lines 22-25, page 3;
- (2) Strike lines 10-25, page 4;
- (3) Strike lines 1-13, page 5;
- (4) Strike lines 24-25, page 6;
- (5) Strike lines 1-3, page 7; and
- (6) Strike the words "backflow prevention device specialist" on page 7, line 25.

The amendments were read.

On motion of Senator Truan and by unanimous consent, the Senate concurred in the House amendments to S.B. 813 by a viva voce vote.

**SENATE BILL 1067 WITH HOUSE AMENDMENTS**

Senator Whitmire called S.B. 1067 from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

**Amendment**

Amend S.B. 1067 by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the sentencing policy of the state and to offenses and punishments under the Penal Code, to offenses and punishments involving certain prohibited or dangerous substances, to the effect of certain convictions and acquittals, and to the civil consequences of certain offenses involving intoxication; providing conforming amendments.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1

SECTION 1.01. The Penal Code is amended to read as follows:

TITLE 1. INTRODUCTORY PROVISIONS

CHAPTER 1. GENERAL PROVISIONS

Sec. 1.01. SHORT TITLE. This code shall be known and may be cited as the Penal Code.

Sec. 1.02. OBJECTIVES OF CODE. The general purposes of this code are to establish a system of prohibitions, penalties, and correctional

measures to deal with conduct that unjustifiably and inexcusably causes or threatens harm to those individual or public interests for which state protection is appropriate. To this end, the provisions of this code are intended, and shall be construed, to achieve the following objectives:

- (1) to insure the public safety through:
  - (A) the deterrent influence of the penalties hereinafter provided;
  - (B) the rehabilitation of those convicted of violations of this code; and
  - (C) such punishment as may be necessary to prevent likely recurrence of criminal behavior;
- (2) by definition and grading of offenses to give fair warning of what is prohibited and of the consequences of violation;
- (3) to prescribe penalties that are proportionate to the seriousness of offenses and that permit recognition of differences in rehabilitation possibilities among individual offenders;
- (4) to safeguard conduct that is without guilt from condemnation as criminal;
- (5) to guide and limit the exercise of official discretion in law enforcement to prevent arbitrary or oppressive treatment of persons suspected, accused, or convicted of offenses; and
- (6) to define the scope of state interest in law enforcement against specific offenses and to systematize the exercise of state criminal jurisdiction.

Sec. 1.03. EFFECT OF CODE. (a) Conduct does not constitute an offense unless it is defined as an offense by statute, municipal ordinance, order of a county commissioners court, or rule authorized by and lawfully adopted under a statute.

(b) The provisions of Titles 1, 2, and 3 [~~of this code~~] apply to offenses defined by other laws, unless the statute defining the offense provides otherwise; however, the punishment affixed to an offense defined outside this code shall be applicable unless the punishment is classified in accordance with this code.

(c) This code does not bar, suspend, or otherwise affect a right or liability to damages, penalty, forfeiture, or other remedy authorized by law to be recovered or enforced in a civil suit for conduct this code defines as an offense, and the civil injury is not merged in the offense.

Sec. 1.04. TERRITORIAL JURISDICTION. (a) This state has jurisdiction over an offense that a person commits by his own conduct or the conduct of another for which he is criminally responsible if:

- (1) either the conduct or a result that is an element of the offense occurs inside this state;
- (2) the conduct outside this state constitutes an attempt to commit an offense inside this state;
- (3) the conduct outside this state constitutes a conspiracy to commit an offense inside this state, and an act in furtherance of the conspiracy occurs inside this state; or
- (4) the conduct inside this state constitutes an attempt, solicitation, or conspiracy to commit, or establishes criminal responsibility for the

commission of, an offense in another jurisdiction that is also an offense under the laws of this state.

(b) If the offense is criminal homicide, a "result" is either the physical impact causing death or the death itself. If the body of a criminal homicide victim is found in this state, it is presumed that the death occurred in this state. If death alone is the basis for jurisdiction, it is a defense to the exercise of jurisdiction by this state that the conduct that constitutes the offense is not made criminal in the jurisdiction where the conduct occurred.

(c) An offense based on an omission to perform a duty imposed on an actor by a statute of this state is committed inside this state regardless of the location of the actor at the time of the offense.

(d) This state includes the land and water ~~[(c)]~~and the air space above the land and water~~[(d)]~~ over which this state has power to define offenses.

Sec. 1.05. CONSTRUCTION OF CODE. (a) The rule that a penal statute is to be strictly construed does not apply to this code. The provisions of this code shall be construed according to the fair import of their terms, to promote justice and effect the objectives of the code.

(b) Unless a different construction is required by the context, Sections 311.011, 311.012, 311.014, 311.015, and 311.021 through 311.032 of ~~[the Code Construction Act]~~Chapter 311, Government Code (Code Construction Act), apply to the construction of this code.

(c) In this code:

(1) a reference to a title, chapter, or section without further identification is a reference to a title, chapter, or section of this code; and

(2) a reference to a subchapter, subsection, subdivision, paragraph, or other numbered or lettered unit without further identification is a reference to a unit of the next-larger unit of this code in which the reference appears.

Sec. 1.06. COMPUTATION OF AGE. A person attains a specified age on the day of the anniversary of his birthdate.

Sec. 1.07. DEFINITIONS. (a) In this code:

(1) "Act" means a bodily movement, whether voluntary or involuntary, and includes speech.

(2) "Actor" ["Suspect"] means a person whose criminal responsibility is in issue in a criminal action. Whenever the term "suspect" ["actor"] is used in this code, it means "actor," ["suspect."]

(3) "Agency" includes authority, board, bureau, commission, committee, council, department, district, division, and office.

(4) "Alcoholic beverage" has the meaning assigned by Section 1.04, Alcoholic Beverage Code.

(5) [(4)] "Another" means a person other than the actor.

(6) [(5)] "Association" means a government or governmental subdivision or agency, trust, partnership, or two or more persons having a joint or common economic interest.

(7) [(6)] "Benefit" means anything reasonably regarded as economic gain or advantage, including benefit to any other person in whose welfare the beneficiary is interested.

(8) ~~(7)~~ "Bodily injury" means physical pain, illness, or any impairment of physical condition.

(9) "Coercion" means a threat, however communicated:

(A) to commit an offense;

(B) to inflict bodily injury in the future on the person threatened or another;

(C) to accuse a person of any offense;

(D) to expose a person to hatred, contempt, or ridicule;

(E) to harm the credit or business repute of any person; or

(F) to take or withhold action as a public servant, or to cause a public servant to take or withhold action.

(10) ~~(8)~~ "Conduct" means an act or omission and its accompanying mental state.

(11) ~~(9)~~ "Consent" means assent in fact, whether express or apparent.

(12) "Controlled substance" has the meaning assigned by Section 481.002, Health and Safety Code.

(13) ~~(9.1)~~ "Corporation" includes nonprofit corporations, professional associations created pursuant to statute, and joint stock companies.

(14) "Correctional facility" means a place designated by law for the confinement of a person arrested for, charged with, or convicted of a criminal offense. The term includes:

(A) a municipal or county jail;

(B) a confinement facility operated by the Texas Department of Criminal Justice;

(C) a confinement facility operated under contract with any division of the Texas Department of Criminal Justice; and

(D) a community corrections facility operated by a community supervision and corrections department.

(15) ~~(10)~~ "Criminal negligence" is defined in Section 6.03 ~~of this code~~ (Culpable Mental States).

(16) "Dangerous drug" has the meaning assigned by Section 483.001, Health and Safety Code.

(17) ~~(11)~~ "Deadly weapon" means:

(A) a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury; or

(B) anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.

(18) "Drug" has the meaning assigned by Section 481.002, Health and Safety Code.

(19) ~~(12)~~ "Effective consent" includes consent by a person legally authorized to act for the owner. Consent is not effective if:

(A) induced by force, threat, or fraud;

(B) given by a person the actor knows is not legally authorized to act for the owner;

(C) given by a person who by reason of youth, mental disease or defect, or intoxication is known by the actor to be unable to make reasonable decisions; or

(D) given solely to detect the commission of an offense.

(20) "Electric generating plant" means a facility that generates electric energy for distribution to the public.

(21) "Electric utility substation" means a facility used to switch or change voltage in connection with the transmission of electric energy for distribution to the public.

(22) [(13)] "Element of offense" means:

(A) the forbidden conduct;

(B) the required culpability;

(C) any required result; and

(D) the negation of any exception to the offense.

(23) [(14)] "Felony" means an offense so designated by law or punishable by death or confinement in a penitentiary.

(24) [(15)] "Government" means:

(A) the state;

(B) a county, municipality, or political subdivision of the state; or

(C) any branch or agency of the state, a county, municipality, or political subdivision.

(25) [(16)] "Harm" means anything reasonably regarded as loss, disadvantage, or injury, including harm to another person in whose welfare the person affected is interested.

(26) [(17)] "Individual" means a human being who has been born and is alive.

(27) "Institutional division" means the institutional division of the Texas Department of Criminal Justice.

(28) [(18)] "Intentional" is defined in Section 6.03 [of this code] (Culpable Mental States).

(29) [(19)] "Knowing" is defined in Section 6.03 [of this code] (Culpable Mental States).

(30) [(20)] "Law" means the constitution or a statute of this state or of the United States, a written opinion of a court of record, a municipal ordinance, an order of a county commissioners court, or a rule authorized by and lawfully adopted under a statute.

(31) [(21)] "Misdemeanor" means an offense so designated by law or punishable by fine, by confinement in jail, or by both fine and confinement in jail.

(32) [(22)] "Oath" includes affirmation.

(33) "Official proceeding" means any type of administrative, executive, legislative, or judicial proceeding that may be conducted before a public servant.

(34) [(23)] "Omission" means failure to act.

(35) [(24)] "Owner" means a person who:

(A) has title to the property, possession of the property, whether lawful or not, or a greater right to possession of the property than the actor; or

(B) is a holder in due course of a negotiable instrument.

(36) [(25)] "Peace officer" means a person elected, employed, or appointed as a peace officer under Article 2.12, Code of Criminal Procedure, Section 51.212 or 51.214, Education Code, or other law.



~~(37) [(26)] "Penal institution" means a place designated by law for confinement of persons arrested for, charged with, or convicted of an offense.~~

~~[(27)] "Person" means an individual, corporation, or association.~~

~~(38) [(28)] "Possession" means actual care, custody, control, or management.~~

~~(39) [(29)] "Public place" means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.~~

~~(40) [(30)] "Public servant" means a person elected, selected, appointed, employed, or otherwise designated as one of the following, even if he has not yet qualified for office or assumed his duties:~~

~~(A) an officer, employee, or agent of government;~~

~~(B) a juror or grand juror; or~~

~~(C) an arbitrator, referee, or other person who is authorized by law or private written agreement to hear or determine a cause or controversy; or~~

~~(D) an attorney at law or notary public when participating in the performance of a governmental function; or~~

~~(E) a candidate for nomination or election to public office; or~~

~~(F) a person who is performing a governmental function under a claim of right although he is not legally qualified to do so.~~

~~(41) [(31)] "Reasonable belief" means a belief that would be held by an ordinary and prudent man in the same circumstances as the actor.~~

~~(42) [(32)] "Reckless" is defined in Section 6.03 [of this code] (Culpable Mental States).~~

~~(43) [(33)] "Rule" includes regulation.~~

~~(44) "Secure correctional facility" means:~~

~~(A) a municipal or county jail; or~~

~~(B) a confinement facility operated by or under a contract with any division of the Texas Department of Criminal Justice.~~

~~(45) [(34)] "Serious bodily injury" means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.~~

~~(46) [(35)] "Swear" includes affirm.~~

~~(47) [(36)] "Unlawful" means criminal or tortious or both and includes what would be criminal or tortious but for a defense not amounting to justification or privilege.~~

~~[(37)] "Electric generating plant" means a facility that generates electric energy for distribution to the public.~~

~~[(38)] "Electric utility substation" means a facility used to switch or change voltage in connection with the transmission of electric energy for distribution to the public.~~

~~[(40)] "Participant in a court proceeding" means a judge, a prosecuting attorney or an assistant prosecuting attorney who represents the state, a grand juror, a party in a court proceeding, an attorney representing a party, a witness, or a juror.]~~

(b) The definition of a term in this code applies to each grammatical variation of the term.

Sec. 1.08. PREEMPTION. No governmental subdivision or agency may enact or enforce a law that makes any conduct covered by this code an offense subject to a criminal penalty. This section shall apply only as long as the law governing the conduct proscribed by this code is legally enforceable.

## CHAPTER 2. BURDEN OF PROOF

Sec. 2.01. PROOF BEYOND A REASONABLE DOUBT. All persons are presumed to be innocent and no person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt. The fact that he has been arrested, confined, or indicted for, or otherwise charged with, the offense gives rise to no inference of guilt at his trial.

Sec. 2.02. EXCEPTION. (a) An exception to an offense in this code is so labeled by the phrase: "It is an exception to the application of . . ."

(b) The prosecuting attorney must negate the existence of an exception in the accusation charging commission of the offense and prove beyond a reasonable doubt that the defendant or defendant's conduct does not fall within the exception.

(c) This section does not affect exceptions applicable to offenses enacted prior to the effective date of this code.

Sec. 2.03. DEFENSE. (a) A defense to prosecution for an offense in this code is so labeled by the phrase: "It is a defense to prosecution . . ."

(b) The prosecuting attorney is not required to negate the existence of a defense in the accusation charging commission of the offense.

(c) The issue of the existence of a defense is not submitted to the jury unless evidence is admitted supporting the defense.

(d) If the issue of the existence of a defense is submitted to the jury, the court shall charge that a reasonable doubt on the issue requires that the defendant be acquitted.

(e) A ground of defense in a penal law that is not plainly labeled in accordance with this chapter has the procedural and evidentiary consequences of a defense.

Sec. 2.04. AFFIRMATIVE DEFENSE. (a) An affirmative defense in this code is so labeled by the phrase: "It is an affirmative defense to prosecution . . ."

(b) The prosecuting attorney is not required to negate the existence of an affirmative defense in the accusation charging commission of the offense.

(c) The issue of the existence of an affirmative defense is not submitted to the jury unless evidence is admitted supporting the defense.

(d) If the issue of the existence of an affirmative defense is submitted to the jury, the court shall charge that the defendant must prove the affirmative defense by a preponderance of evidence.

Sec. 2.05. PRESUMPTION. When this code or another penal law establishes a presumption with respect to any fact, it has the following consequences:

(1) if there is sufficient evidence of the facts that give rise to the presumption, the issue of the existence of the presumed fact must be submitted to the jury, unless the court is satisfied that the evidence as a whole clearly precludes a finding beyond a reasonable doubt of the presumed fact; and

(2) if the existence of the presumed fact is submitted to the jury, the court shall charge the jury, in terms of the presumption and the specific element to which it applies, as follows:

(A) that the facts giving rise to the presumption must be proven beyond a reasonable doubt;

(B) that if such facts are proven beyond a reasonable doubt the jury may find that the element of the offense sought to be presumed exists, but it is not bound to so find;

(C) that even though the jury may find the existence of such element, the state must prove beyond a reasonable doubt each of the other elements of the offense charged; and

(D) if the jury has a reasonable doubt as to the existence of a fact or facts giving rise to the presumption, the presumption fails and the jury shall not consider the presumption for any purpose.

#### CHAPTER 3. MULTIPLE PROSECUTIONS

Sec. 3.01. DEFINITION. In this chapter, "criminal episode" means the commission of two or more offenses, regardless of whether the harm is directed toward or inflicted upon more than one person or item of property, under the following circumstances:

(1) the offenses are committed pursuant to the same transaction or pursuant to two or more transactions that are connected or constitute a common scheme or plan; or

(2) the offenses are the repeated commission of the same or similar offenses.

#### Sec. 3.02. CONSOLIDATION AND JOINDER OF PROSECUTIONS.

(a) A defendant may be prosecuted in a single criminal action for all offenses arising out of the same criminal episode.

(b) When a single criminal action is based on more than one charging instrument within the jurisdiction of the trial court, the state shall file written notice of the action not less than 30 days prior to the trial.

(c) If a judgment of guilt is reversed, set aside, or vacated, and a new trial ordered, the state may not prosecute in a single criminal action in the new trial any offense not joined in the former prosecution unless evidence to establish probable guilt for that offense was not known to the appropriate prosecuting official at the time the first prosecution commenced.

Sec. 3.03. SENTENCES FOR OFFENSES ARISING OUT OF SAME CRIMINAL EPISODE. When the accused is found guilty of more than one offense arising out of the same criminal episode prosecuted in a single criminal action, sentence for each offense for which he has been found guilty shall be pronounced. Such sentences shall run concurrently.

Sec. 3.04. SEVERANCE. (a) Whenever two or more offenses have been consolidated or joined for trial under Section 3.02 [~~of this code~~], the defendant shall have a right to a severance of the offenses.

(b) In the event of severance under this section, the provisions of Section 3.03 ~~[of this code]~~ do not apply, and the court in its discretion may order the sentences to run either concurrently or consecutively.

## TITLE 2. GENERAL PRINCIPLES OF CRIMINAL RESPONSIBILITY

### CHAPTER 6. CULPABILITY GENERALLY

#### Sec. 6.01. REQUIREMENT OF VOLUNTARY ACT OR OMISSION.

(a) A person commits an offense only if he voluntarily engages in conduct, including an act, an omission, or possession.

(b) Possession is a voluntary act if the possessor knowingly obtains or receives the thing possessed or is aware of his control of the thing for a sufficient time to permit him to terminate his control.

(c) A person who omits to perform an act does not commit an offense unless a law as defined by Section 1.07 ~~[of this code]~~ provides that the omission is an offense or otherwise provides that he has a duty to perform the act.

Sec. 6.02. REQUIREMENT OF CULPABILITY. (a) Except as provided in Subsection (b) ~~[of this section]~~, a person does not commit an offense unless he intentionally, knowingly, recklessly, or with criminal negligence engages in conduct as the definition of the offense requires.

(b) If the definition of an offense does not prescribe a culpable mental state, a culpable mental state is nevertheless required unless the definition plainly dispenses with any mental element.

(c) If the definition of an offense does not prescribe a culpable mental state, but one is nevertheless required under Subsection (b) ~~[of this section]~~, intent, knowledge, or recklessness suffices to establish criminal responsibility.

(d) Culpable mental states are classified according to relative degrees, from highest to lowest, as follows:

- (1) intentional;
- (2) knowing;
- (3) reckless;
- (4) criminal negligence.

(e) Proof of a higher degree of culpability than that charged constitutes proof of the culpability charged.

Sec. 6.03. DEFINITIONS OF CULPABLE MENTAL STATES. (a) A person acts intentionally, or with intent, with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result.

(b) A person acts knowingly, or with knowledge, with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

(c) A person acts recklessly, or is reckless, with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross

deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

(d) A person acts with criminal negligence, or is criminally negligent, with respect to circumstances surrounding his conduct or the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

Sec. 6.04. CAUSATION: CONDUCT AND RESULTS. (a) A person is criminally responsible if the result would not have occurred but for his conduct, operating either alone or concurrently with another cause, unless the concurrent cause was clearly sufficient to produce the result and the conduct of the actor clearly insufficient.

(b) A person is nevertheless criminally responsible for causing a result if the only difference between what actually occurred and what he desired, contemplated, or risked is that:

(1) a different offense was committed; or

(2) a different person or property was injured, harmed, or otherwise affected.

#### CHAPTER 7. CRIMINAL RESPONSIBILITY FOR CONDUCT OF ANOTHER

##### SUBCHAPTER A. COMPLICITY

Sec. 7.01. PARTIES TO OFFENSES. (a) A person is criminally responsible as a party to an offense if the offense is committed by his own conduct, by the conduct of another for which he is criminally responsible, or by both.

(b) Each party to an offense may be charged with commission of the offense.

(c) All traditional distinctions between accomplices and principals are abolished by this section, and each party to an offense may be charged and convicted without alleging that he acted as a principal or accomplice.

Sec. 7.02. CRIMINAL RESPONSIBILITY FOR CONDUCT OF ANOTHER. (a) A person is criminally responsible for an offense committed by the conduct of another if:

(1) acting with the kind of culpability required for the offense, he causes or aids an innocent or nonresponsible person to engage in conduct prohibited by the definition of the offense;

(2) acting with intent to promote or assist the commission of the offense, he solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense; or

(3) having a legal duty to prevent commission of the offense and acting with intent to promote or assist its commission, he fails to make a reasonable effort to prevent commission of the offense.

(b) If, in the attempt to carry out a conspiracy to commit one felony, another felony is committed by one of the conspirators, all conspirators are guilty of the felony actually committed, though having no intent to commit it, if the offense was committed in furtherance of the unlawful purpose and was one that should have been anticipated as a result of the carrying out of the conspiracy.

Sec. 7.03. DEFENSES EXCLUDED. In a prosecution in which an actor's criminal responsibility is based on the conduct of another, the actor may be convicted on proof of commission of the offense and that he was a party to its commission, and it is no defense:

(1) that the actor belongs to a class of persons that by definition of the offense is legally incapable of committing the offense in an individual capacity; or

(2) that the person for whose conduct the actor is criminally responsible has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense or of a different type or class of offense, or is immune from prosecution.

SECTION 7.04. Under the terms of Section 22.109(b), Government Code, Rule 412(e), Texas Rules of Criminal Evidence, is disapproved.

[Sections 7.05-7.20 reserved for expansion]

#### SUBCHAPTER B. CORPORATIONS AND ASSOCIATIONS

Sec. 7.21. DEFINITIONS. In this subchapter:

(1) "Agent" means a director, officer, employee, or other person authorized to act in behalf of a corporation or association.

(2) "High managerial agent" means:

(A) a partner in a partnership;

(B) an officer of a corporation or association;

(C) an agent of a corporation or association who has duties of such responsibility that his conduct reasonably may be assumed to represent the policy of the corporation or association.

Sec. 7.22. CRIMINAL RESPONSIBILITY OF CORPORATION OR ASSOCIATION. (a) If conduct constituting an offense is performed by an agent acting in behalf of a corporation or association and within the scope of his office or employment, the corporation or association is criminally responsible for an offense defined:

(1) in this code where corporations and associations are made subject thereto;

(2) by law other than this code in which a legislative purpose to impose criminal responsibility on corporations or associations plainly appears; or

(3) by law other than this code for which strict liability is imposed, unless a legislative purpose not to impose criminal responsibility on corporations or associations plainly appears.

(b) A corporation or association is criminally responsible for a felony offense only if its commission was authorized, requested, commanded, performed, or recklessly tolerated by:

(1) a majority of the governing board acting in behalf of the corporation or association; or

(2) a high managerial agent acting in behalf of the corporation or association and within the scope of his office or employment.

Sec. 7.23. CRIMINAL RESPONSIBILITY OF PERSON FOR CONDUCT IN BEHALF OF CORPORATION OR ASSOCIATION. (a) An individual is criminally responsible for conduct that he performs in the name of or in behalf of a corporation or association to the same extent as if the conduct were performed in his own name or behalf.

(b) An agent having primary responsibility for the discharge of a duty to act imposed by law on a corporation or association is criminally responsible for omission to discharge the duty to the same extent as if the duty were imposed by law directly on him.

(c) If an individual is convicted of conduct constituting an offense performed in the name of or on behalf of a corporation or association, he is subject to the sentence authorized by law for an individual convicted of the offense.

Sec. 7.24. DEFENSE TO CRIMINAL RESPONSIBILITY OF CORPORATION OR ASSOCIATION. It is an affirmative defense to prosecution of a corporation or association under Section 7.22(a)(1) or (a)(2) ~~[of this code]~~ that the high managerial agent having supervisory responsibility over the subject matter of the offense employed due diligence to prevent its commission.

#### CHAPTER 8. GENERAL DEFENSES TO CRIMINAL RESPONSIBILITY

Sec. 8.01. INSANITY. (a) It is an affirmative defense to prosecution that, at the time of the conduct charged, the actor, as a result of severe mental disease or defect, did not know that his conduct was wrong.

(b) The term "mental disease or defect" does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

Sec. 8.02. MISTAKE OF FACT. (a) It is a defense to prosecution that the actor through mistake formed a reasonable belief about a matter of fact if his mistaken belief negated the kind of culpability required for commission of the offense.

(b) Although an actor's mistake of fact may constitute a defense to the offense charged, he may nevertheless be convicted of any lesser included offense of which he would be guilty if the fact were as he believed.

Sec. 8.03. MISTAKE OF LAW. (a) It is no defense to prosecution that the actor was ignorant of the provisions of any law after the law has taken effect.

(b) It is an affirmative defense to prosecution that the actor reasonably believed the conduct charged did not constitute a crime and that he acted in reasonable reliance upon:

(1) an official statement of the law contained in a written order or grant of permission by an administrative agency charged by law with responsibility for interpreting the law in question; or

(2) a written interpretation of the law contained in an opinion of a court of record or made by a public official charged by law with responsibility for interpreting the law in question.

(c) Although an actor's mistake of law may constitute a defense to the offense charged, he may nevertheless be convicted of a lesser included offense of which he would be guilty if the law were as he believed.

Sec. 8.04. INTOXICATION. (a) Voluntary intoxication does not constitute a defense to the commission of crime.

(b) Evidence of temporary insanity caused by intoxication may be introduced by the actor in mitigation of the penalty attached to the offense for which he is being tried.

(c) When temporary insanity is relied upon as a defense and the evidence tends to show that such insanity was caused by intoxication, the court shall charge the jury in accordance with the provisions of this section.

(d) For purposes of this section "intoxication" means disturbance of mental or physical capacity resulting from the introduction of any substance into the body.

Sec. 8.05. DURESS. (a) It is an affirmative defense to prosecution that the actor engaged in the proscribed conduct because he was compelled to do so by threat of imminent death or serious bodily injury to himself or another.

(b) In a prosecution for an offense that does not constitute a felony, it is an affirmative defense to prosecution that the actor engaged in the proscribed conduct because he was compelled to do so by force or threat of force.

(c) Compulsion within the meaning of this section exists only if the force or threat of force would render a person of reasonable firmness incapable of resisting the pressure.

(d) The defense provided by this section is unavailable if the actor intentionally, knowingly, or recklessly placed himself in a situation in which it was probable that he would be subjected to compulsion.

(e) It is no defense that a person acted at the command or persuasion of his spouse, unless he acted under compulsion that would establish a defense under this section.

Sec. 8.06. ENTRAPMENT. (a) It is a defense to prosecution that the actor engaged in the conduct charged because he was induced to do so by a law enforcement agent using persuasion or other means likely to cause persons to commit the offense. Conduct merely affording a person an opportunity to commit an offense does not constitute entrapment.

(b) In this section "law enforcement agent" includes personnel of the state and local law enforcement agencies as well as of the United States and any person acting in accordance with instructions from such agents.

Sec. 8.07. AGE AFFECTING CRIMINAL RESPONSIBILITY. (a) A person may not be prosecuted for or convicted of any offense that he committed when younger than 15 years of age except:

(1) perjury and aggravated perjury when it appears by proof that he had sufficient discretion to understand the nature and obligation of an oath;

(2) a violation of a penal statute cognizable under Chapter 302, Acts of the 55th Legislature, Regular Session, 1957[~~as amended~~] (Article 67011-4, Vernon's Texas Civil Statutes), except conduct which violates the laws of this state prohibiting driving while intoxicated or under the influence of intoxicating liquor (first or subsequent offense) or driving while under the influence of any narcotic drug or of any other drug to a degree which renders him incapable of safely driving a vehicle (first or subsequent offense);

(3) a violation of a motor vehicle traffic ordinance of an incorporated city or town in this state;



(4) a misdemeanor punishable by fine only other than public intoxication; or

(5) a violation of a penal ordinance of a political subdivision.

(b) Unless the juvenile court waives jurisdiction and certifies the individual for criminal prosecution, a person may not be prosecuted for or convicted of any offense committed before reaching 17 years of age except:

(1) perjury and aggravated perjury when it appears by proof that he had sufficient discretion to understand the nature and obligation of an oath;

(2) a violation of a penal statute cognizable under Chapter 302, Acts of the 55th Legislature, Regular Session, 1957[~~as amended~~] (Article 67011-4, Vernon's Texas Civil Statutes), except conduct which violates the laws of this state prohibiting driving while intoxicated or under the influence of intoxicating liquor (first or subsequent offense) or driving while under the influence of any narcotic drug or of any other drug to a degree which renders him incapable of safely driving a vehicle (first or subsequent offense);

(3) a violation of a motor vehicle traffic ordinance of an incorporated city or town in this state;

(4) a misdemeanor punishable by fine only other than public intoxication; or

(5) a violation of a penal ordinance of a political subdivision.

(c) Unless the juvenile court waives jurisdiction and certifies the individual for criminal prosecution, a person who has been alleged in a petition for an adjudication hearing to have engaged in delinquent conduct or conduct indicating a need for supervision may not be prosecuted for or convicted of any offense alleged in the juvenile court petition or any offense within the knowledge of the juvenile court judge as evidenced by anything in the record of the juvenile court proceedings.

(d) No person may, in any case, be punished by death for an offense committed while he was younger than 17 years.

#### CHAPTER 9. JUSTIFICATION EXCLUDING CRIMINAL RESPONSIBILITY

##### SUBCHAPTER A. GENERAL PROVISIONS

##### Sec. 9.01. DEFINITIONS. In this chapter:

(1) "Custody" means:

(A) under arrest by a peace officer; or

(B) under restraint by a public servant pursuant to an order of a court.

(2) "Escape" means unauthorized departure from custody or failure to return to custody following temporary leave for a specific purpose or limited period, but does not include a violation of conditions of community supervision ~~[probation]~~ or parole, or following leave that is part of an intermittent sentence.

(3) "Deadly force" means force that is intended or known by the actor to cause, or in the manner of its use or intended use is capable of causing, death or serious bodily injury.

Sec. 9.02. JUSTIFICATION AS A DEFENSE. It is a defense to prosecution that the conduct in question is justified under this chapter.

Sec. 9.03. CONFINEMENT AS JUSTIFIABLE FORCE. Confinement is justified when force is justified by this chapter if the actor takes reasonable measures to terminate the confinement as soon as he knows he safely can unless the person confined has been arrested for an offense.

Sec. 9.04. THREATS AS JUSTIFIABLE FORCE. The threat of force is justified when the use of force is justified by this chapter. For purposes of this section, a threat to cause death or serious bodily injury by the production of a weapon or otherwise, as long as the actor's purpose is limited to creating an apprehension that he will use deadly force if necessary, does not constitute the use of deadly force.

Sec. 9.05. RECKLESS INJURY OF INNOCENT THIRD PERSON. Even though an actor is justified under this chapter in threatening or using force or deadly force against another, if in doing so he also recklessly injures or kills an innocent third person, the justification afforded by this chapter is unavailable in a prosecution for the reckless injury or killing of the innocent third person.

Sec. 9.06. CIVIL REMEDIES UNAFFECTED. The fact that conduct is justified under this chapter does not abolish or impair any remedy for the conduct that is available in a civil suit.

[Sections 9.07-9.20 reserved for expansion]

#### SUBCHAPTER B. JUSTIFICATION GENERALLY

Sec. 9.21. PUBLIC DUTY. (a) Except as qualified by Subsections (b) and (c) [~~of this section~~], conduct is justified if the actor reasonably believes the conduct is required or authorized by law, by the judgment or order of a competent court or other governmental tribunal, or in the execution of legal process.

(b) The other sections of this chapter control when force is used against a person to protect persons (Subchapter C), to protect property (Subchapter D), for law enforcement (Subchapter E), or by virtue of a special relationship (Subchapter F).

(c) The use of deadly force is not justified under this section unless the actor reasonably believes the deadly force is specifically required by statute or unless it occurs in the lawful conduct of war. If deadly force is so justified, there is no duty to retreat before using it.

(d) The justification afforded by this section is available if the actor reasonably believes:

(1) the court or governmental tribunal has jurisdiction or the process is lawful, even though the court or governmental tribunal lacks jurisdiction or the process is unlawful; or

(2) his conduct is required or authorized to assist a public servant in the performance of his official duty, even though the servant exceeds his lawful authority.

Sec. 9.22. NECESSITY. Conduct is justified if:

(1) the actor reasonably believes the conduct is immediately necessary to avoid imminent harm;

(2) the desirability and urgency of avoiding the harm clearly outweigh, according to ordinary standards of reasonableness, the harm

sought to be prevented by the law ~~proscribing~~ ~~[prescribing]~~ the conduct; and

(3) a legislative purpose to exclude the justification claimed for the conduct does not otherwise plainly appear.

[Sections 9.23-9.30 reserved for expansion]

#### SUBCHAPTER C. PROTECTION OF PERSONS

Sec. 9.31. SELF-DEFENSE. (a) Except as provided in Subsection (b) of this section, a person is justified in using force against another when and to the degree he reasonably believes the force is immediately necessary to protect himself against the other's use or attempted use of unlawful force.

(b) The use of force against another is not justified:

(1) in response to verbal provocation alone;

(2) to resist an arrest or search that the actor knows is being made by a peace officer, or by a person acting in a peace officer's presence and at his direction, even though the arrest or search is unlawful, unless the resistance is justified under Subsection (c) ~~[of this section]~~;

(3) if the actor consented to the exact force used or attempted by the other; or

(4) if the actor provoked the other's use or attempted use of unlawful force, unless:

(A) the actor abandons the encounter, or clearly communicates to the other his intent to do so reasonably believing he cannot safely abandon the encounter; and

(B) the other nevertheless continues or attempts to use unlawful force against the actor.

(c) The use of force to resist an arrest or search is justified:

(1) if, before the actor offers any resistance, the peace officer (or person acting at his direction) uses or attempts to use greater force than necessary to make the arrest or search; and

(2) when and to the degree the actor reasonably believes the force is immediately necessary to protect himself against the peace officer's (or other person's) use or attempted use of greater force than necessary.

(d) The use of deadly force is not justified under this subchapter except as provided in Sections 9.32, 9.33, and 9.34 ~~[of this code]~~.

Sec. 9.32. DEADLY FORCE IN DEFENSE OF PERSON. A person is justified in using deadly force against another:

(1) if he would be justified in using force against the other under Section 9.31 ~~[of this code]~~;

(2) if a reasonable person in the actor's situation would not have retreated; and

(3) when and to the degree he reasonably believes the deadly force is immediately necessary:

(A) to protect himself against the other's use or attempted use of unlawful deadly force; or

(B) to prevent the other's imminent commission of aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery.

Sec. 9.33. DEFENSE OF THIRD PERSON. A person is justified in using force or deadly force against another to protect a third person if:

(1) under the circumstances as the actor reasonably believes them to be, the actor would be justified under Section 9.31 or 9.32 ~~[of this code]~~ in using force or deadly force to protect himself against the unlawful force or unlawful deadly force he reasonably believes to be threatening the third person he seeks to protect; and

(2) the actor reasonably believes that his intervention is immediately necessary to protect the third person.

Sec. 9.34. PROTECTION OF LIFE OR HEALTH. (a) A person is justified in using force, but not deadly force, against another when and to the degree he reasonably believes the force is immediately necessary to prevent the other from committing suicide or inflicting serious bodily injury to himself.

(b) A person is justified in using both force and deadly force against another when and to the degree he reasonably believes the force or deadly force is immediately necessary to preserve the other's life in an emergency.

[Sections 9.35-9.40 reserved for expansion]

#### SUBCHAPTER D. PROTECTION OF PROPERTY

Sec. 9.41. PROTECTION OF ONE'S OWN PROPERTY. (a) A person in lawful possession of land or tangible, movable property is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to prevent or terminate the other's trespass on the land or unlawful interference with the property.

(b) A person unlawfully dispossessed of land or tangible, movable property by another is justified in using force against the other when and to the degree the actor reasonably believes the force is immediately necessary to reenter the land or recover the property if the actor uses the force immediately or in fresh pursuit after the dispossession and:

(1) the actor reasonably believes the other had no claim of right when he dispossessed the actor; or

(2) the other accomplished the dispossession by using force, threat, or fraud against the actor.

Sec. 9.42. DEADLY FORCE TO PROTECT PROPERTY. A person is justified in using deadly force against another to protect land or tangible, movable property:

(1) if he would be justified in using force against the other under Section 9.41 ~~[of this code]~~; and

(2) when and to the degree he reasonably believes the deadly force is immediately necessary:

(A) to prevent the other's imminent commission of arson, burglary, robbery, aggravated robbery, theft during the nighttime, or criminal mischief during the nighttime; or

(B) to prevent the other who is fleeing immediately after committing burglary, robbery, aggravated robbery, or theft during the nighttime from escaping with the property; and

(3) he reasonably believes that:

(A) the land or property cannot be protected or recovered by any other means; or

(B) the use of force other than deadly force to protect or recover the land or property would expose the actor or another to a substantial risk of death or serious bodily injury.

Sec. 9.43. PROTECTION OF THIRD PERSON'S PROPERTY. A person is justified in using force or deadly force against another to protect land or tangible, movable property of a third person if, under the circumstances as he reasonably believes them to be, the actor would be justified under Section 9.41 or 9.42 ~~[of this code]~~ in using force or deadly force to protect his own land or property and:

(1) the actor reasonably believes the unlawful interference constitutes attempted or consummated theft of or criminal mischief to the tangible, movable property; or

(2) the actor reasonably believes that:

(A) the third person has requested his protection of the land or property;

(B) he has a legal duty to protect the third person's land or property; or

(C) the third person whose land or property he uses force or deadly force to protect is the actor's spouse, parent, or child, resides with the actor, or is under the actor's care.

Sec. 9.44. USE OF DEVICE TO PROTECT PROPERTY. The justification afforded by Sections 9.41 and 9.43 ~~[of this code]~~ applies to the use of a device to protect land or tangible, movable property if:

(1) the device is not designed to cause, or known by the actor to create a substantial risk of causing, death or serious bodily injury; and

(2) use of the device is reasonable under all the circumstances as the actor reasonably believes them to be when he installs the device.

[Sections 9.45-9.50 reserved for expansion]

#### SUBCHAPTER E. LAW ENFORCEMENT

Sec. 9.51. ARREST AND SEARCH. (a) A peace officer, or a person acting in a peace officer's presence and at his direction, is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to make or assist in making an arrest or search, or to prevent or assist in preventing escape after arrest, if:

(1) the actor reasonably believes the arrest or search is lawful or, if the arrest or search is made under a warrant, he reasonably believes the warrant is valid; and

(2) before using force, the actor manifests his purpose to arrest or search and identifies himself as a peace officer or as one acting at a peace officer's direction, unless he reasonably believes his purpose and identity are already known by or cannot reasonably be made known to the person to be arrested.

(b) A person other than a peace officer (or one acting at his direction) is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to make or assist in making a lawful arrest, or to prevent or assist in preventing escape after

lawful arrest if, before using force, the actor manifests his purpose to and the reason for the arrest or reasonably believes his purpose and the reason are already known by or cannot reasonably be made known to the person to be arrested.

(c) A peace officer is justified in using deadly force against another when and to the degree the peace officer reasonably believes the deadly force is immediately necessary to make an arrest, or to prevent escape after arrest, if the use of force would have been justified under Subsection (a) ~~[of this section]~~ and:

(1) the actor reasonably believes the conduct for which arrest is authorized included the use or attempted use of deadly force; or

(2) the actor reasonably believes there is a substantial risk that the person to be arrested will cause death or serious bodily injury to the actor or another if the arrest is delayed.

(d) A person other than a peace officer acting in a peace officer's presence and at his direction is justified in using deadly force against another when and to the degree the person reasonably believes the deadly force is immediately necessary to make a lawful arrest, or to prevent escape after a lawful arrest, if the use of force would have been justified under Subsection (b) ~~[of this section]~~ and:

(1) the actor reasonably believes the felony or offense against the public peace for which arrest is authorized included the use or attempted use of deadly force; or

(2) the actor reasonably believes there is a substantial risk that the person to be arrested will cause death or serious bodily injury to another if the arrest is delayed.

(e) There is no duty to retreat before using deadly force justified by Subsection (c) or (d) ~~[of this section]~~.

(f) Nothing in this section relating to the actor's manifestation of purpose or identity shall be construed as conflicting with any other law relating to the issuance, service, and execution of an arrest or search warrant either under the laws of this state or the United States.

(g) Deadly force may only be used under the circumstances enumerated in Subsections (c) and (d) ~~[of this section]~~.

Sec. 9.52. PREVENTION OF ESCAPE FROM CUSTODY. The use of force to prevent the escape of an arrested person from custody is justifiable when the force could have been employed to effect the arrest under which the person is in custody, except that a guard employed by a correctional facility ~~[penal institution]~~ or a peace officer is justified in using any force, including deadly force, that he reasonably believes to be immediately necessary to prevent the escape of a person from the correctional facility ~~[a jail, prison, or other institution for the detention of persons charged with or convicted of a crime]~~.

Sec. 9.53. MAINTAINING SECURITY IN CORRECTIONAL FACILITY ~~[PENAL INSTITUTION]~~. An officer or employee of a correctional facility ~~[A peace officer, jailer, or guard employed at a municipal or county jail, or a guard or correctional officer employed by the Texas Department of Corrections]~~ is justified in using force against a person in custody when and to the degree the ~~[peace]~~ officer~~;~~ ~~jailer,~~

guard;] or employee [~~correctional officer~~] reasonably believes the force is necessary to maintain the security of the correctional facility [~~penal institution~~], the safety or security of other persons in custody or employed by the correctional facility [~~penal institution~~], or his own safety or security.

[Sections 9.54-9.60 reserved for expansion]

#### SUBCHAPTER F. SPECIAL RELATIONSHIPS

Sec. 9.61. PARENT—CHILD. (a) The use of force, but not deadly force, against a child younger than 18 years is justified:

(1) if the actor is the child's parent or stepparent or is acting in loco parentis to the child; and

(2) when and to the degree the actor reasonably believes the force is necessary to discipline the child or to safeguard or promote his welfare.

(b) For purposes of this section, "in loco parentis" includes grandparent and guardian, any person acting by, through, or under the direction of a court with jurisdiction over the child, and anyone who has express or implied consent of the parent or parents.

Sec. 9.62. EDUCATOR—STUDENT. The use of force, but not deadly force, against a person is justified:

(1) if the actor is entrusted with the care, supervision, or administration of the person for a special purpose; and

(2) when and to the degree the actor reasonably believes the force is necessary to further the special purpose or to maintain discipline in a group.

Sec. 9.63. GUARDIAN—INCOMPETENT. The use of force, but not deadly force, against a mental incompetent is justified:

(1) if the actor is the incompetent's guardian or someone similarly responsible for the general care and supervision of the incompetent; and

(2) when and to the degree the actor reasonably believes the force is necessary:

(A) to safeguard and promote the incompetent's welfare; or

(B) if the incompetent is in an institution for his care and custody, to maintain discipline in the institution.

### TITLE 3. PUNISHMENTS

#### CHAPTER 12. PUNISHMENTS

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 12.01. PUNISHMENT IN ACCORDANCE WITH CODE. (a) A person adjudged guilty of an offense under this code shall be punished in accordance with this chapter and the Code of Criminal Procedure[~~, 1965~~].

(b) Penal laws enacted after the effective date of this code shall be classified for punishment purposes in accordance with this chapter.

(c) This chapter does not deprive a court of authority conferred by law to forfeit property, dissolve a corporation, suspend or cancel a license or permit, remove a person from office, cite for contempt, or impose any other civil penalty. The civil penalty may be included in the sentence.

Sec. 12.02. CLASSIFICATION OF OFFENSES. Offenses are designated as felonies or misdemeanors.

Sec. 12.03. CLASSIFICATION OF MISDEMEANORS. (a) Misdemeanors are classified according to the relative seriousness of the offense into three categories:

- (1) Class A misdemeanors;
- (2) Class B misdemeanors;
- (3) Class C misdemeanors.

(b) An offense designated a misdemeanor in this code without specification as to punishment or category is a Class C misdemeanor.

(c) Conviction of a Class C misdemeanor does not impose any legal disability or disadvantage.

Sec. 12.04. CLASSIFICATION OF FELONIES. (a) Felonies are classified according to the relative seriousness of the offense into five ~~four~~ categories:

- (1) capital felonies;
- (2) felonies of the first degree;
- (3) felonies of the second degree;
- (4) felonies of the third degree; and
- (5) state jail felonies.

(b) An offense designated a felony in this code without specification as to category is a state jail felony ~~of the third degree~~.

[Sections 12.05-12.20 reserved for expansion]

#### SUBCHAPTER B. ORDINARY MISDEMEANOR PUNISHMENTS

Sec. 12.21. CLASS A MISDEMEANOR. An individual adjudged guilty of a Class A misdemeanor shall be punished by:

- (1) a fine not to exceed \$4,000 ~~[\$3,000]~~;
- (2) confinement in jail for a term not to exceed one year; or
- (3) both such fine and confinement ~~[imprisonment]~~.

Sec. 12.22. CLASS B MISDEMEANOR. An individual adjudged guilty of a Class B misdemeanor shall be punished by:

- (1) a fine not to exceed \$2,000 ~~[\$1,500]~~;
- (2) confinement in jail for a term not to exceed 180 days; or
- (3) both such fine and confinement ~~[imprisonment]~~.

Sec. 12.23. CLASS C MISDEMEANOR. An individual adjudged guilty of a Class C misdemeanor shall be punished by a fine not to exceed \$500.

[Sections 12.24-12.30 reserved for expansion]

#### SUBCHAPTER C. ORDINARY FELONY PUNISHMENTS

Sec. 12.31. CAPITAL FELONY. (a) An individual adjudged guilty of a capital felony in a case in which the state seeks the death penalty shall be punished by imprisonment ~~[confinement]~~ in the institutional division ~~[of the Texas Department of Criminal Justice]~~ for life or by death. An individual adjudged guilty of a capital felony in a case in which the state does not seek the death penalty shall be punished by imprisonment ~~[confinement]~~ in the institutional division for life.

(b) In a capital felony trial in which the state seeks the death penalty, prospective jurors shall be informed that a sentence of life imprisonment or death is mandatory on conviction of a capital felony. In a capital felony trial in which the state does not seek the death penalty, prospective jurors shall be informed that the state is not seeking the death penalty and that a sentence of life imprisonment is mandatory on conviction of the capital felony.



Sec. 12.32. FIRST DEGREE ~~[FIRST-DEGREE]~~ FELONY PUNISHMENT. (a) An individual adjudged guilty of a felony of the first degree shall be punished by imprisonment ~~[confinement]~~ in the institutional division ~~[Texas Department of Corrections]~~ for life or for any term of not more than 99 years or less than 5 years.

(b) In addition to imprisonment, an individual adjudged guilty of a felony of the first degree may be punished by a fine not to exceed \$10,000.

Sec. 12.33. SECOND DEGREE ~~[SECOND-DEGREE]~~ FELONY PUNISHMENT. (a) An individual adjudged guilty of a felony of the second degree shall be punished by imprisonment ~~[confinement]~~ in the institutional division ~~[Texas Department of Corrections]~~ for any term of not more than 20 years or less than 2 years.

(b) In addition to imprisonment, an individual adjudged guilty of a felony of the second degree may be punished by a fine not to exceed \$10,000.

Sec. 12.34. THIRD DEGREE ~~[THIRD-DEGREE]~~ FELONY PUNISHMENT. (a) An individual adjudged guilty of a felony of the third degree shall be punished by imprisonment:

~~[(1) confinement]~~ in the institutional division ~~[of the Texas Department of Criminal Justice]~~ for any term of not more than 10 years or less than 2 years; ~~or~~

~~[(2) confinement in a community correctional facility for any term of not more than 1 year].~~

(b) In addition to imprisonment, an individual adjudged guilty of a felony of the third degree may be punished by a fine not to exceed \$10,000.

Sec. 12.35. STATE JAIL FELONY PUNISHMENT. (a) Except as provided by Subsections (b) and (d), an individual adjudged guilty of a state jail felony shall be punished by confinement in a state jail felony facility for any term of not more than one year.

(b) An individual adjudged guilty of a state jail felony shall be punished by confinement in a state jail felony facility for any term of not more than:

(1) 18 months, if the defendant has previously been convicted of a felony; or

(2) 24 months if the defendant has previously been convicted of two or more felonies.

(c) In addition to confinement, an individual adjudged guilty of a state jail felony may be punished by a fine not to exceed \$10,000.

(d) An individual adjudged guilty of a state jail felony shall be punished for a third degree felony if it is shown on the trial of the offense that:

(1) a deadly weapon as defined by Section 1.07, Penal Code, was used or exhibited during the commission of the offense or during immediate flight following the commission of the offense, and that the individual used or exhibited the deadly weapon or was a party to the offense and knew that a deadly weapon would be used or exhibited; or

(2) the individual has previously been finally convicted of any felony:

(A) listed in Section 8(b)(3), Article 42.18, Code of Criminal Procedure; or

(B) for which the judgment contains an affirmative finding under Article 42.012, Code of Criminal Procedure, or under Section 3g(a)(2), Article 42.12, Code of Criminal Procedure, as that section existed before September 1, 1993.

(e) For the purposes of this section, a defendant previously has been convicted of a felony regardless of whether the sentence for the previous conviction was actually imposed or was probated and suspended.

[Sections 12.36 [42.35]-12.40 reserved for expansion]

#### SUBCHAPTER D. EXCEPTIONAL SENTENCES

Sec. 12.41. CLASSIFICATION OF OFFENSES OUTSIDE THIS CODE. For purposes of this subchapter, any conviction not obtained from a prosecution under this code shall be classified as follows:

(1) "felony of the third degree" if imprisonment [confinement] in a penitentiary is affixed to the offense as a possible punishment;

(2) "Class B misdemeanor" if the offense is not a felony and confinement in a jail is affixed to the offense as a possible punishment;

(3) "Class C misdemeanor" if the offense is punishable by fine only.

Sec. 12.42. PENALTIES FOR REPEAT AND HABITUAL FELONY OFFENDERS. (a) If it is [be] shown on the trial of a state jail felony punishable under Section 12.35(d) or on the trial of a third-degree felony that the defendant has been once before convicted of a [any] felony, on conviction he shall be punished for a second-degree felony.

(b) If it is [be] shown on the trial of a second-degree felony that the defendant has been once before convicted of a [any] felony, on conviction he shall be punished for a first-degree felony.

(c) If it is [be] shown on the trial of a first-degree felony that the defendant has been once before convicted of a [any] felony, on conviction he shall be punished by imprisonment [confinement] in the institutional division of the Texas Department of Criminal Justice [Corrections] for life, or for any term of not more than 99 years or less than 15 years. In addition to imprisonment, an individual may be punished by a fine not to exceed \$10,000.

(d) If it is [be] shown on the trial of a [any] felony offense that the defendant has previously been finally convicted of two felony offenses, and the second previous felony conviction is for an offense that occurred subsequent to the first previous conviction having become final, on conviction he shall be punished by imprisonment [confinement] in the institutional division of the Texas Department of Criminal Justice [Corrections] for life, or for any term of not more than 99 years or less than 25 years.

(e) A previous conviction for a state jail felony may be used for enhancement purposes under this section only if the defendant was punished for the offense under Section 12.35(d).

~~[Sec. 12.422. IMPOSITION OF SUBSTANCE ABUSE FELONY PUNISHMENT. (a) A court may punish an eligible defendant convicted of an offense listed in Subsection (d) of this section that is otherwise punishable as a felony of the first, second, or third degree by imposing on the defendant:~~

~~[(1) a term of confinement and treatment in a substance abuse treatment facility operated by the community justice assistance division of the Texas Department of Criminal Justice for an indeterminate term of not more than one year or less than six months, except that the minimum term for a defendant whose underlying offense is an offense under Article 67011-1, Revised Statutes, is 30 days;~~

~~[(2) a term of not less than two years or more than 10 years in the institutional division of the Texas Department of Criminal Justice, to begin not later than the 30th day after the day on which the defendant is released from a substance abuse facility; and~~

~~[(3) a fine not to exceed \$10,000.~~

~~[(b) A defendant is an eligible defendant for the purposes of this section if:~~

~~[(1) a pre-sentence investigation conducted under Section 9, Article 42.12, Code of Criminal Procedure, or any other indication suggests that drug or alcohol abuse significantly contributed to the commission of the offense;~~

~~[(2) the court determines that there are no other community-based programs or facilities that are suitable for the treatment of the defendant; and~~

~~[(3) after considering the gravity and circumstances of the offense committed, the court finds that the punishment would best serve the ends of justice.~~

~~[(c) A conviction of an offense for which punishment is imposed under this section is a final conviction for the purposes of Section 12.42 of this code.~~

~~[(d) This section applies to all felony offenses other than murder under Section 19.02, Penal Code, or an offense listed under Section 3g(a)(1), Article 42.12, Code of Criminal Procedure, or a sentence the judgment for which contains an affirmative finding under Section 3g(a)(2) of that article.]~~

**Sec. 12.43. PENALTIES FOR REPEAT AND HABITUAL MISDEMEANOR OFFENDERS.** (a) If it is [be] shown on the trial of a Class A misdemeanor that the defendant has been before convicted of a Class A misdemeanor or any degree of felony, on conviction he shall be punished by confinement in jail for any term of not more than one year or less than 90 days.

(b) If it is [be] shown on the trial of a Class B misdemeanor that the defendant has been before convicted of a Class A or Class B misdemeanor or any degree of felony, on conviction he shall be punished by confinement in jail for any term of not more than 180 days or less than 30 days.

(c) If the punishment scheme for an offense contains a specific enhancement provision increasing punishment for a defendant who has previously been convicted of the offense, the specific enhancement provision controls over this section.

Sec. 12.44. REDUCTION OF THIRD DEGREE OR STATE JAIL ~~[THIRD-DEGREE]~~ FELONY PUNISHMENT TO MISDEMEANOR PUNISHMENT. (a) A court may punish a defendant who is convicted of a third degree felony by imposing the confinement permissible as punishment for a Class A misdemeanor, a fine not to exceed \$10,000, or both such fine and confinement, or may punish a defendant who is convicted of a state jail felony by imposing the confinement permissible as punishment for a Class B misdemeanor, a fine not to exceed \$10,000, or both such fine and confinement if, after considering the gravity and circumstances of the felony committed and the history, character, and rehabilitative needs of the defendant, the court finds that such punishment would best serve the ends of justice.

(b) When a court is authorized to impose punishment for a lesser category of offense as provided in Subsection (a) ~~[of this section]~~, the court may authorize the prosecuting attorney to prosecute initially for the lesser category of offense.

Sec. 12.45. ADMISSION OF UNADJUDICATED OFFENSE. (a) A person may, with the consent of the attorney for the state, admit during the sentencing hearing his guilt of one or more unadjudicated offenses and request the court to take each into account in determining sentence for the offense or offenses of which he stands adjudged guilty.

(b) Before a court may take into account an admitted offense over which exclusive venue lies in another county or district, the court must obtain permission from the prosecuting attorney with jurisdiction over the offense.

(c) If a court lawfully takes into account an admitted offense, prosecution is barred for that offense.

Sec. 12.46. USE OF PRIOR CONVICTIONS. (a) The use of a conviction for enhancement purposes shall not preclude the subsequent use of such conviction for enhancement purposes.

(b) For the purposes of Sections 12.35 and 12.42, a conviction for any felony may not be used for enhancement if:

(1) the conviction is for an offense committed more than 10 years before the offense for which the defendant being tried was committed; and

(2) the defendant has not been convicted of a felony committed within the 10 years immediately preceding the date on which the offense for which the defendant is being tried was committed.

Sec. 12.47. PENALTY IF OFFENSE COMMITTED BECAUSE OF BIAS OR PREJUDICE. (a) If the court makes an affirmative finding under Article 42.014, Code of Criminal Procedure, in the trial of a Class B or Class C misdemeanor, the defendant shall be punished for the next highest degree of misdemeanor.

(b) If it is shown on the trial of a felony offense in which the court makes an affirmative finding under Article 42.014, Code of Criminal Procedure, that the defendant has been previously convicted of an offense for which the court made an affirmative finding under Article 42.014, Code of Criminal Procedure, the maximum fine that the court may impose is \$20,000.

~~[Sec. 12.47. PENALTY IF CRIME COMMITTED AGAINST CHILD DURING RITUAL OR CEREMONY. (a) The punishment prescribed for an offense listed in Subsection (b) of this section is increased to the punishment prescribed for the next highest category of offense if it is shown on the trial of the offense that:~~

~~[(1) the victim of the offense was younger than 17 years of age at the time of the offense; and~~

~~[(2) the offense was committed as part of a ritual or ceremony.~~

~~[(b) This section applies to an offense under the following sections of the Penal Code:~~

~~[(1) Section 21.11 (Indecency with a Child);~~

~~[(2) Section 22.01 (Assault);~~

~~[(3) Section 22.011 (Sexual Assault);~~

~~[(4) Section 22.02 (Aggravated Assault);~~

~~[(5) Section 22.021 (Aggravated Sexual Assault);~~

~~[(6) Section 22.04 (Injury to a Child or an Elderly Individual);~~

~~[(7) Section 22.041 (Abandoning or Endangering Child);~~

~~[(8) Section 25.02 (Incest);~~

~~[(9) Section 25.06 (Solicitation of a Child);~~

~~[(10) Section 25.11 (Sale or Purchase of Child);~~

~~[(11) Section 43.24 (Sale, Distribution, or Display of Harmful Material to Minor); and~~

~~[(12) Section 43.25 (Sexual Performance by a Child).~~

~~[(c) This section does not apply to an offense for which the punishment otherwise prescribed is the punishment for a first-degree felony or a capital felony.]~~

~~[Sections 12.48 [12.48]-12.50 reserved for expansion]~~

#### SUBCHAPTER E. CORPORATIONS AND ASSOCIATIONS

Sec. 12.51. AUTHORIZED PUNISHMENTS FOR CORPORATIONS AND ASSOCIATIONS. (a) If a corporation or association is adjudged guilty of an offense that provides a penalty consisting of a fine only, a court may sentence the corporation or association to pay a fine in an amount fixed by the court, not to exceed the fine provided by the offense.

(b) If a corporation or association is adjudged guilty of an offense that provides a penalty including imprisonment, or that provides no specific penalty, a court may sentence the corporation or association to pay a fine in an amount fixed by the court, not to exceed:

(1) \$20,000 if the offense is a felony of any category;

(2) \$10,000 if the offense is a Class A or Class B misdemeanor;

(3) \$2,000 if the offense is a Class C misdemeanor; or

(4) \$50,000 if, as a result of an offense classified as a felony or Class A misdemeanor, an individual suffers serious bodily injury or death.

(c) In lieu of the fines authorized by Subsections (a), (b)(1), (b)(2), and (b)(4) ~~[of this section]~~, if a court finds that the corporation or association gained money or property or caused personal injury or death, property damage, or other loss through the commission of a felony or Class A or Class B misdemeanor, the court may sentence the corporation or association to pay a fine in an amount fixed by the court, not to exceed double the amount gained or caused by the corporation or association to be lost or damaged, whichever is greater.

(d) In addition to any sentence that may be imposed by this section, a corporation or association that has been adjudged guilty of an offense may be ordered by the court to give notice of the conviction to any person the court deems appropriate.

(e) On conviction of a corporation or association, the court shall notify the attorney general of that fact.

[Sections 12.52-12.70 reserved for expansion]

#### SUBCHAPTER F. PERSON OFFENSE RANKING

Sec. 12.71. CATEGORIZATION. Each offense in the person offense classification is categorized as:

(1) capital murder; or

(2) a first, second, or third degree felony, or a state jail felony.

Sec. 12.72. FUNCTION. The ranking system established by this subchapter shall be used to determine a defendant's eligibility for deferred adjudication under Article 42.12, Code of Criminal Procedure.

Sec. 12.73. COMPATIBILITY WITH EXISTING PROVISIONS. This subchapter is intended to complement the classification system established by Subchapter A.

Sec. 12.74. PERSON OFFENSES. (a) In the person offense classification, capital murder is the only offense within its category.

(b) In the person offense classification, the first degree felony offenses are:

(1) first degree murder;

(2) aggravated sexual assault;

(3) injury to a child (intentional with serious bodily injury);

(4) first degree aggravated kidnapping;

(5) aggravated assault (with serious bodily injury to public servant);

(6) aggravated robbery (with serious bodily injury or with use of weapon);

(7) arson (with bodily injury); and

(8) burglary (with bodily injury or attempt).

(c) In the person offense classification, the second degree felony offenses are:

(1) second degree murder;

(2) involuntary manslaughter;

(3) intoxication manslaughter;

(4) second degree aggravated kidnapping;

(5) robbery (bodily injury or threat to elderly or disabled person);

(6) burglary (occupant or weapon);

(7) tampering with consumer product (with bodily injury);

(8) aggravated assault;

(9) injury to a child (reckless with serious bodily injury);

(10) indecency with a child (touching);

(11) abandoning child (imminent danger);

(12) sexual performance by child;

(13) sexual assault; and

(14) compelling prostitution.

(d) In the person offense classification, the third degree felony offenses are:

- (1) kidnapping;
  - (2) robbery;
  - (3) intoxication assault (driving while intoxicated resulting in serious bodily injury);
  - (4) injury to a child (intentional with bodily injury);
  - (5) abandoning child (without intent to return);
  - (6) prohibited sexual conduct (incest);
  - (7) sale of child;
  - (8) indecency with child (exposing);
  - (9) solicitation of a child; and
  - (10) burglary (habitation, without aggravating factors).
- (e) In the person offense classification, the state jail felony offenses are:

- (1) negligent homicide;
- (2) injury to a child (reckless with bodily injury or negligent with serious bodily injury);
- (3) abandoning child;
- (4) aiding suicide;
- (5) interference with possession of or access to child;
- (6) agreement to abduct from custody; and
- (7) false imprisonment.

#### TITLE 4. INCHOATE OFFENSES

##### CHAPTER 15. PREPARATORY OFFENSES

Sec. 15.01. CRIMINAL ATTEMPT. (a) A person commits an offense if, with specific intent to commit an offense, he does an act amounting to more than mere preparation that tends but fails to effect the commission of the offense intended.

(b) If a person attempts an offense that may be aggravated, his conduct constitutes an attempt to commit the aggravated offense if an element that aggravates the offense accompanies the attempt.

(c) It is no defense to prosecution for criminal attempt that the offense attempted was actually committed.

(d) An offense under this section is one category lower than the offense attempted, and if the offense attempted is a state jail felony [~~of the third degree~~], the offense is a Class A misdemeanor.

Sec. 15.02. CRIMINAL CONSPIRACY. (a) A person commits criminal conspiracy if, with intent that a felony be committed:

- (1) he agrees with one or more persons that they or one or more of them engage in conduct that would constitute the offense; and
- (2) he or one or more of them performs an overt act in pursuance of the agreement.

(b) An agreement constituting a conspiracy may be inferred from acts of the parties.

(c) It is no defense to prosecution for criminal conspiracy that:

- (1) one or more of the coconspirators is not criminally responsible for the object offense;
- (2) one or more of the coconspirators has been acquitted, so long as two or more coconspirators have not been acquitted;

(3) one or more of the coconspirators has not been prosecuted or convicted, has been convicted of a different offense, or is immune from prosecution;

(4) the actor belongs to a class of persons that by definition of the object offense is legally incapable of committing the object offense in an individual capacity; or

(5) the object offense was actually committed.

(d) An offense under this section is one category lower than the most serious felony that is the object of the conspiracy, and if the most serious felony that is the object of the conspiracy is a state jail felony ~~[of the third degree]~~, the offense is a Class A misdemeanor.

Sec. 15.03. CRIMINAL SOLICITATION. (a) A person commits an offense if, with intent that a capital felony or felony of the first degree be committed, he requests, commands, or attempts to induce another to engage in specific conduct that, under the circumstances surrounding his conduct as the actor believes them to be, would constitute the felony or make the other a party to its commission.

(b) A person may not be convicted under this section on the uncorroborated testimony of the person allegedly solicited and unless the solicitation is made under circumstances strongly corroborative of both the solicitation itself and the actor's intent that the other person act on the solicitation.

(c) It is no defense to prosecution under this section that:

(1) the person solicited is not criminally responsible for the felony solicited;

(2) the person solicited has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense or of a different type or class of offense, or is immune from prosecution;

(3) the actor belongs to a class of persons that by definition of the felony solicited is legally incapable of committing the offense in an individual capacity; or

(4) the felony solicited was actually committed.

(d) An offense under this section is:

(1) a felony of the first degree if the offense solicited is a capital offense; or

(2) a felony of the second degree if the offense solicited is a felony of the first degree.

Sec. 15.04. RENUNCIATION DEFENSE. (a) It is an affirmative defense to prosecution under Section 15.01 ~~[of this code]~~ that under circumstances manifesting a voluntary and complete renunciation of his criminal objective the actor avoided commission of the offense attempted by abandoning his criminal conduct or, if abandonment was insufficient to avoid commission of the offense, by taking further affirmative action that prevented the commission.

(b) It is an affirmative defense to prosecution under Section 15.02 or 15.03 ~~[of this code]~~ that under circumstances manifesting a voluntary and complete renunciation of his criminal objective the actor countermanded his solicitation or withdrew from the conspiracy before commission of the



object offense and took further affirmative action that prevented the commission of the object offense.

(c) Renunciation is not voluntary if it is motivated in whole or in part:

(1) by circumstances not present or apparent at the inception of the actor's course of conduct that increase the probability of detection or apprehension or that make more difficult the accomplishment of the objective; or

(2) by a decision to postpone the criminal conduct until another time or to transfer the criminal act to another but similar objective or victim.

(d) Evidence that the defendant renounced his criminal objective by abandoning his criminal conduct, countermanding his solicitation, or withdrawing from the conspiracy before the criminal offense was committed and made substantial effort to prevent the commission of the object offense shall be admissible as mitigation at the hearing on punishment if he has been found guilty of criminal attempt, criminal solicitation, or criminal conspiracy; and in the event of a finding of renunciation under this subsection, the punishment shall be one grade lower than that provided for the offense committed.

Sec. 15.05. NO OFFENSE. Attempt or conspiracy to commit, or solicitation of, a preparatory offense defined in this chapter is not an offense.

#### CHAPTER 16. CRIMINAL INSTRUMENTS AND INTERCEPTION OF WIRE OR ORAL COMMUNICATION

Sec. 16.01. UNLAWFUL USE OF CRIMINAL INSTRUMENT. (a) A person commits an offense if:

(1) he possesses a criminal instrument with intent to use it in the commission of an offense; or

(2) with knowledge of its character and with intent to use or aid or permit another to use in the commission of an offense, he manufactures, adapts, sells, installs, or sets up a criminal instrument.

(b) For the purpose of this section, "criminal instrument" means anything, the possession, manufacture, or sale of which is not otherwise an offense, that is specially designed, made, or adapted for use in the commission of an offense.

(c) An offense under Subsection (a)(1) ~~[of this section]~~ is one category lower than the offense intended. An offense under Subsection (a)(2) ~~[of this section]~~ is a state jail felony ~~[of the third degree]~~.

Sec. 16.02. UNLAWFUL INTERCEPTION, USE, OR DISCLOSURE OF WIRE, ORAL, OR ELECTRONIC COMMUNICATIONS. (a) In this section, "covert entry," "communication common carrier," "contents," "electronic, mechanical, or other device," "intercept," "investigative or law enforcement officer," "oral communication," "electronic communication," "readily accessible to the general public," and "wire communication" have the meanings given those terms in Article 18.20, Code of Criminal Procedure.

(b) ~~A [Except as specifically provided by Subsection (c) of this section, a]~~ person commits an offense if he:

(1) intentionally intercepts, endeavors to intercept, or procures another person to intercept or endeavor to intercept a wire, oral, or electronic communication;

(2) intentionally discloses or endeavors to disclose to another person the contents of a wire, oral, or electronic communication if he knows or has reason to know the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;

(3) intentionally uses or endeavors to use the contents of a wire, oral, or electronic communication if he knows or is reckless about whether the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;

(4) knowingly or intentionally effects a covert entry for the purpose of intercepting wire, oral, or electronic communications without court order or authorization; or

(5) intentionally uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when the device:

(A) is affixed to, or otherwise transmits a signal through a wire, cable, or other connection used in wire communications; or

(B) transmits communications by radio or interferes with the transmission of communications by radio.

(c) It is an affirmative defense to prosecution under ~~[exception to the application of]~~ Subsection (b) ~~[of this section]~~ that:

(1) an operator of a switchboard or an officer, employee, or agent of a communication common carrier whose facilities are used in the transmission of a wire or electronic communication intercepts a communication or discloses or uses an intercepted communication in the normal course of employment while engaged in an activity that is a necessary incident to the rendition of service or to the protection of the rights or property of the carrier of the communication, unless the interception results from the communication common carrier's use of service observing or random monitoring for purposes other than mechanical or service quality control checks;

(2) an officer, employee, or agent of a communication common carrier provides information, facilities, or technical assistance to an investigative or law enforcement officer who is authorized as provided by this article to intercept a wire, oral, or electronic communication;

(3) a person acting under color of law intercepts a wire, oral, or electronic communication if the person is a party to the communication or if one of the parties to the communication has given prior consent to the interception;

(4) a person not acting under color of law intercepts a wire, oral, or electronic communication if the person is a party to the communication or if one of the parties to the communication has given prior consent to the interception unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of the constitution or laws of the United States or of this state or for the purpose of committing any other injurious act;

(5) a person acting under color of law intercepts a wire, oral, or electronic communication if:

(A) prior consent for the interception has been given by a magistrate;

(B) an immediate life-threatening situation exists;

(C) the person is a member of a law enforcement unit specially trained to:

(i) respond to and deal with life-threatening situations; or

(ii) install electronic, mechanical, or other devices; and

(D) the interception ceases immediately on termination of the life-threatening situation;

(6) an officer, employee, or agent of the Federal Communications Commission intercepts a communication transmitted by radio or discloses or uses an intercepted communication in the normal course of employment and in the discharge of the monitoring responsibilities exercised by the Federal Communications Commission in the enforcement of Chapter 5, Title 47, United States Code;

(7) a person intercepts or obtains access to an electronic communication that was made through an electronic communication system that is configured to permit the communication to be readily accessible to the general public;

(8) a person intercepts radio communication that is transmitted:

(A) by a station for the use of the general public;

(B) to ships, aircraft, vehicles, or persons in distress;

(C) by a governmental, law enforcement, civil defense, private land mobile, or public safety communications system that is readily accessible to the general public;

(D) by a station operating on an authorized frequency within the bands allocated to the amateur, citizens band, or general mobile radio services; or

(E) by a marine or aeronautical communications system;

(9) a person intercepts a wire or electronic communication the transmission of which causes harmful interference to a lawfully operating station or consumer electronic equipment, to the extent necessary to identify the source of the interference;

(10) a user of the same frequency intercepts a radio communication made through a system that uses frequencies monitored by individuals engaged in the provision or the use of the system, if the communication is not scrambled or encrypted; or

(11) a provider of electronic communications service records the fact that a wire or electronic communication was initiated or completed in order to protect the provider, another provider furnishing service towards the completion of the communication, or a user of that service from fraudulent, unlawful, or abusive use of the service.

(d)(1) ~~A [Except as provided by Subsection (c) of this section, a]~~ person commits an offense if he:

(A) intentionally manufactures, assembles, possesses, or sells an electronic, mechanical, or other device knowing or having reason

to know that the device is designed primarily for nonconsensual interception of wire, electronic, or oral communications and that the device or a component of the device has been or will be used for an unlawful purpose; or

(B) places in a newspaper, magazine, handbill, or other publication an advertisement of an electronic, mechanical, or other device:

(i) knowing or having reason to know that the device is designed primarily for nonconsensual interception of wire, electronic, or oral communications;

(ii) promoting the use of the device for the purpose of nonconsensual interception of wire, electronic, or oral communications; or

(iii) knowing or having reason to know that the advertisement will promote the use of the device for the purpose of nonconsensual interception of wire, electronic, or oral communications.

(2) An offense under Subdivision (1) ~~[of this subsection]~~ is a state jail felony ~~[punishable by confinement in the Texas Department of Corrections for a term of not more than five years or a fine of not more than \$10,000, or both].~~

(e) It is an affirmative defense to prosecution under ~~[exception to the application of]~~ Subsection (d) ~~[of this section]~~ that the manufacture, assembly, possession, or sale of an electronic, mechanical, or other device that is designed primarily for the purpose of nonconsensual interception of wire, electronic, or oral communication is by:

(1) a communication common carrier or a provider of wire or electronic communications service or an officer, agent, or employee of or a person under contract with a communication common carrier or provider acting in the normal course of the provider's or communication carrier's business;

(2) an officer, agent, or employee of a person under contract with, bidding on contracts with, or doing business with the United States or this state acting in the normal course of the activities of the United States or this state; or

(3) a law enforcement agency that has an established unit specifically designated to respond to and deal with life-threatening situations or specifically trained to install wire, oral, or electronic communications intercept equipment.

(f) Except as provided by Subsections (d) and ~~(h)~~ ~~[(i) of this section]~~, an offense under this section is a felony of the second degree.

(g) ~~[Property seized pursuant to this section may be forfeited to the Department of Public Safety in the manner provided by Article 18.18, Code of Criminal Procedure, for disposition of seized property. The department may destroy the property or maintain, repair, use, and operate the property in a manner consistent with Article 18.20, Code of Criminal Procedure.]~~

~~[(h)]~~ For purposes of this section:

(1) An immediate life-threatening situation exists when human life is directly threatened in either a hostage or barricade situation.

(2) "Member of a law enforcement unit specially trained to respond to and deal with life-threatening situations" means a peace officer who has received a minimum of 40 hours a year of training in hostage and barricade suspect situations. This training must be evidenced by the submission of appropriate documentation to the Commission on Law Enforcement Officer Standards and Education.

~~(h) [(h)]~~(1) A person commits an offense if, knowing that a government attorney or an investigative or law enforcement officer has been authorized or has applied for authorization to intercept wire, electronic, or oral communications, the person obstructs, impedes, prevents, gives notice to another of, or attempts to give notice to another of the interception.

(2) An offense under this subsection is a state jail felony ~~[punishable by confinement in the Texas Department of Corrections for a term of not more than five years or by a fine of not more than \$10,000, or both].~~

(i) This section expires September 1, 2005, and shall not be in force on and after that date.

~~[Sec. 16.021. Illegal Interception. (a) In this section, "communication" and "interception" have the same meanings as are given those terms in Section 123.001, Civil Practice and Remedies Code.~~

~~(b) A person, including a landlord, building operator, or employee of a communication common carrier, commits an offense if the person knowingly aids in or permits an interception or attempted interception.~~

~~(c) It is a defense to prosecution under this section that the interception is authorized by state or federal law.~~

~~(d) An offense under this section is a Class A misdemeanor, unless the actor has been previously convicted under this section, in which event the offense is a felony of the third degree.]~~

Sec. 16.03. UNLAWFUL USE OF PEN REGISTER OR TRAP AND TRACE DEVICE. (a) Except as authorized by a court order obtained under Article 18.21, Code of Criminal Procedure, or in an emergency under the circumstances described and permitted under that article, a person commits an offense if he knowingly installs or utilizes a pen register or trap and trace device to record telephone numbers dialed from or to a telephone instrument.

(b) In this section, "authorized peace officer," "communications common carrier," "pen register," and "trap and trace device" have the meanings assigned by Article 18.21, Code of Criminal Procedure.

(c) It is an exception to the application of Subsection (a) ~~[of this section]~~ that an officer, employee, or agent of a communications common carrier~~[as defined by Article 18.21, Code of Criminal Procedure]~~ installs or utilizes a device or equipment to record the numbers dialed from or to a telephone instrument in the normal course of business of the carrier, for the protection of property or services provided by the carrier, or assists an authorized peace officer in executing an order issued under Article 18.21, Code of Criminal Procedure.

(d) It is an exception to the application of Subsection (a) ~~[of this section]~~ that the installation or utilization of a pen register or trap and trace device was made by an officer, agent, or employee of a lawful

enterprise while engaged in an activity that is a necessary incident to the rendition of service or to the protection of property of or services provided by the enterprise, and was not made for the purpose of gathering information for a law enforcement agency or private investigative agency, other than information related to the theft of communication or information services provided by the enterprise.

(e) An offense under this section is a state jail felony ~~[of the third degree]~~.

~~[(f) A pen register or trap and trace device used in violation of this section is subject to seizure and may be forfeited to the Department of Public Safety in the manner provided for disposition of seized property by Article 18.18, Code of Criminal Procedure.]~~

Sec. 16.04. UNLAWFUL ACCESS TO STORED COMMUNICATIONS. (a) In this section, "electronic communication," "electronic storage," "user," and "wire communication" have the meanings assigned to those terms in Article 18.21, Code of Criminal Procedure.

(b) A person commits an offense if the person obtains, alters, or prevents authorized access to a wire or electronic communication while the communication is in electronic storage by:

- (1) intentionally obtaining access without authorization to a facility through which a wire or electronic communications service is provided; or
- (2) intentionally exceeding an authorization for access to a facility through which a wire or electronic communications service is provided.

(c) Except as provided by Subsection (d) ~~[of this section]~~, an offense under Subsection (b) ~~[of this section]~~ is a Class A misdemeanor.

(d) If committed to obtain a benefit or to harm another ~~[for purposes of commercial advantage, malicious destruction or damage, or private commercial gain]~~, an offense is a state jail felony ~~[of the third degree]~~. ~~[The amount of a fine that may be imposed for an offense punished under this subsection, including an offense punishable under this subsection but subject to enhanced penalties, may be in any amount not to exceed \$250,000.]~~

(e) It is an exception to the application of Subsection (b) ~~[of this section]~~ that the conduct was authorized by:

- (1) the provider of the wire or electronic communications service;
- (2) the user of the wire or electronic communications service; or
- (3) Article 18.21, Code of Criminal Procedure.

Sec. 16.05. ILLEGAL DIVULGENCE OF PUBLIC COMMUNICATIONS. (a) In this section, "electronic communication," "electronic communications service," and "electronic communications system" have the meanings given those terms in Article 18.20, Code of Criminal Procedure.

(b) Except as provided by Subsection (c) ~~[of this section]~~, a person who provides electronic communications service to the public commits an offense if he intentionally divulges the contents of a communication, other than a communication to that person or that person's agent, while the communication is in transmission on that service, to any person other than the addressee or the intended recipient of the communication or the addressee's or intended recipient's agent.

(c) A person who provides electronic communications service to the public may divulge the contents of a communication:

- (1) as authorized by federal or state law;
- (2) to a person employed, authorized, or whose facilities are used to forward the communication to the communication's destination; or
- (3) to a law enforcement agency if the contents were obtained by the service provider and the contents appear to pertain to the commission of a crime.

(d) Except as provided by Subsections (e) and (f) ~~[of this section]~~, an offense under Subsection (b) ~~[of this section]~~ is a state jail felony ~~[punishable by confinement in the Texas Department of Corrections for a term of not more than five years or a fine not to exceed \$10,000, or both].~~

(e) If committed for a tortious or illegal purpose or to gain a benefit; ~~or for direct or indirect commercial advantage or private commercial gain~~, an offense under Subsection (b) ~~[of this section]~~ that involves a radio communication that is not scrambled or encrypted:

(1) is a Class A misdemeanor if the communication is not the radio portion of a cellular telephone communication, a public land mobile radio service communication, or a paging service communication; or

(2) is a Class C misdemeanor ~~[punishable by a fine of not more than \$500]~~ if the communication is the radio portion of a cellular telephone communication, a public and mobile radio service or communication or a paging service communication.

(f)(1) A person who engages in conduct constituting an offense under Subsection (b) ~~[of this section]~~ that is not for a tortious or illegal purpose or for the purpose of direct or indirect commercial advantage or private commercial gain and involves a radio communication that is transmitted on frequencies allocated under Subpart D or Part 74 of the rules of the Federal Communications Commission and that is not scrambled or encrypted shall be subject to suit by the federal or state government in a court of competent jurisdiction for appropriate injunctive relief. If it is shown on the trial of the civil suit that the defendant has been convicted of an offense under Subsection (b) or that the defendant has been found liable in a civil action under Article 18.20, Code of Criminal Procedure, in addition to granting injunctive relief the court shall impose a civil penalty of \$500 on the defendant.

(2) A court may use any means within the court's authority to enforce an injunction issued under Subdivision (1) ~~[(2) of this subsection]~~ and shall impose a fine as for contempt of court of not less than \$500 for each violation of the injunction.

## TITLE 5. OFFENSES AGAINST THE PERSON

### CHAPTER 19. CRIMINAL HOMICIDE

Sec. 19.01. TYPES OF CRIMINAL HOMICIDE. (a) A person commits criminal homicide if he intentionally, knowingly, recklessly, or with criminal negligence causes the death of an individual.

(b) Criminal homicide is murder, capital murder, ~~[voluntary manslaughter, involuntary]~~ manslaughter, or criminally negligent homicide.

Sec. 19.02. MURDER. (a) In this section:

(1) "Adequate cause" means cause that would commonly produce a degree of anger, rage, resentment, or terror in a person of ordinary temper, sufficient to render the mind incapable of cool reflection.

(2) "Sudden passion" means passion directly caused by and arising out of provocation by the individual killed or another acting with the person killed which passion arises at the time of the offense and is not solely the result of former provocation.

(b) A person commits an offense if he:

- (1) intentionally or knowingly causes the death of an individual;
- (2) intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of an individual; or
- (3) commits or attempts to commit a felony, other than ~~[voluntary or involuntary]~~ manslaughter, and in the course of and in furtherance of the commission or attempt, or in immediate flight from the commission or attempt, he commits or attempts to commit an act clearly dangerous to human life that causes the death of an individual.

(c) Except as provided by Subsection (d), an ~~(b)~~ An offense under this section is a felony of the first degree.

(d) At the punishment stage of a trial, the defendant may raise the issue as to whether he caused the death under the immediate influence of sudden passion arising from an adequate cause. If the defendant proves the issue in the affirmative by a preponderance of the evidence, the offense is a felony of the second degree.

Sec. 19.03. CAPITAL MURDER. (a) A person commits an offense if he commits murder as defined under Section 19.02(a)(1) ~~[of this code]~~ and:

- (1) the person murders a peace officer or fireman who is acting in the lawful discharge of an official duty and who the person knows is a peace officer or fireman;
- (2) the person intentionally commits the murder in the course of committing or attempting to commit kidnapping, burglary, robbery, aggravated sexual assault, ~~[or] arson, or obstruction or retaliation;~~
- (3) the person commits the murder for remuneration or the promise of remuneration or employs another to commit the murder for remuneration or the promise of remuneration;
- (4) the person commits the murder while escaping or attempting to escape from a penal institution;
- (5) the person, while incarcerated in a penal institution, murders another;

(A) who is employed in the operation of the penal institution; or

(B) with the intent to establish, maintain, or participate in a combination or in the profits of a combination;

(6) the person:

(A) while incarcerated for an offense under this section or Section 19.02, murders another; or

(B) while serving a sentence of life imprisonment or a term of 99 years for an offense under Section 20.04, 22.021, or 29.03, murders another; or



(7) the person murders more than one person:

(A) during the same criminal transaction; or

(B) during different criminal transactions but the murders are committed pursuant to the same scheme or course of conduct.

(8) the person murders an individual under six years of age.

(b) An offense under this section is a capital felony.

(c) If the jury or, when authorized by law, the judge does not find beyond a reasonable doubt that the defendant is guilty of an offense under this section, he may be convicted of murder or of any other lesser included offense.

Sec. 19.04. ~~[VOLUNTARY MANSLAUGHTER. (a) A person commits an offense if he causes the death of an individual under circumstances that would constitute murder under Section 19.02 of this code, except that he caused the death under the immediate influence of sudden passion arising from an adequate cause.~~

~~[(b) "Sudden passion" means passion directly caused by and arising out of provocation by the individual killed or another acting with the person killed which passion arises at the time of the offense and is not solely the result of former provocation.~~

~~[(c) "Adequate cause" means cause that would commonly produce a degree of anger, rage, resentment, or terror in a person of ordinary temper, sufficient to render the mind incapable of cool reflection.~~

~~[(d) An offense under this section is a felony of the second degree.~~

[Sec. 19.05. INVOLUNTARY] MANSLAUGHTER. (a) A person commits an offense if he[~~:~~

~~[(1)]~~ recklessly causes the death of an individual[~~;~~ or

~~[(2)]~~ by accident or mistake when operating a motor vehicle, airplane, helicopter, or boat while intoxicated and, by reason of such intoxication, causes the death of an individual.

~~[(b) For purposes of this section, "intoxicated" has the meaning assigned that term by Subsection (a), Article 67011-1, Revised Statutes].~~

~~(b) [(c)]~~ An offense under this section is a felony of the second [third] degree.

[Sec. 19.06. EVIDENCE. (a) In all prosecutions for murder or voluntary manslaughter, the state or the defendant shall be permitted to offer testimony as to all relevant facts and circumstances surrounding the killing and the previous relationship existing between the accused and the deceased, together with all relevant facts and circumstances going to show the condition of the mind of the accused at the time of the offense.

~~[(b) In a prosecution for murder or manslaughter, if a defendant raises as a defense a justification provided by Section 9.31, 9.32, or 9.33 of this code, the defendant, in order to establish the defendant's reasonable belief that use of force or deadly force was immediately necessary, shall be permitted to offer:~~

~~[(1) relevant evidence that the defendant had been the victim of acts of family violence committed by the deceased, as family violence is defined by Section 71.01, Family Code; and~~

~~[(2) relevant expert testimony regarding the condition of the mind of the defendant at the time of the offense, including those relevant facts~~

~~and circumstances relating to family violence that are the basis of the expert's opinion.]~~

Sec. ~~19.05~~ [19.07]. CRIMINALLY NEGLIGENT HOMICIDE. (a) A person commits an offense if he causes the death of an individual by criminal negligence.

(b) An offense under this section is a state jail felony [Class A misdemeanor].

#### CHAPTER 20. KIDNAPPING AND FALSE IMPRISONMENT

Sec. 20.01. DEFINITIONS. In this chapter:

(1) "Restrain" means to restrict a person's movements without consent, so as to interfere substantially with his liberty, by moving him from one place to another or by confining him. Restraint is "without consent" if it is accomplished by:

(A) force, intimidation, or deception; or

(B) any means, including acquiescence of the victim, if he is a child less than 14 years of age or an incompetent person and the parent, guardian, or person or institution acting in loco parentis has not acquiesced in the movement or confinement.

(2) "Abduct" means to restrain a person with intent to prevent his liberation by:

(A) secreting or holding him in a place where he is not likely to be found; or

(B) using or threatening to use deadly force.

(3) "Relative" means a parent or stepparent, ancestor, sibling, or uncle or aunt, including an adoptive relative of the same degree through marriage or adoption.

Sec. 20.02. FALSE IMPRISONMENT. (a) A person commits an offense if he intentionally or knowingly restrains another person.

(b) It is an affirmative defense to prosecution under this section that:

(1) the person restrained was a child younger [less] than 14 years of age;

(2) the actor was a relative of the child; and

(3) the actor's sole intent was to assume lawful control of the child.

(c) An offense under this section is a Class B misdemeanor unless the actor recklessly exposes the victim to a substantial risk of serious bodily injury, in which event it is a felony of the third degree.

(d) It is no offense to detain or move another under this section when it is for the purpose of effecting a lawful arrest or detaining an individual lawfully arrested.

Sec. 20.03. KIDNAPPING. (a) A person commits an offense if he intentionally or knowingly abducts another person.

(b) It is an affirmative defense to prosecution under this section that:

(1) the abduction was not coupled with intent to use or to threaten to use deadly force;

(2) the actor was a relative of the person abducted; and

(3) the actor's sole intent was to assume lawful control of the victim.

(c) An offense under this section is a felony of the third degree.

Sec. 20.04. AGGRAVATED KIDNAPPING. (a) A person commits an offense if he intentionally or knowingly abducts another person with the intent to:

- (1) hold him for ransom or reward;
- (2) use him as a shield or hostage;
- (3) facilitate the commission of a felony or the flight after the attempt or commission of a felony;
- (4) inflict bodily injury on him or violate or abuse him sexually;
- (5) terrorize him or a third person; or
- (6) interfere with the performance of any governmental or political function.

(b) ~~Except as provided by Subsection (c), an [An] offense under this section is a felony of the first degree [unless the actor voluntarily releases the victim alive and in a safe place, in which event it is a felony of the second degree].~~

~~(c) At the punishment stage of a trial, the defendant may raise the issue as to whether he voluntarily released the victim in a safe place. If the defendant proves the issue in the affirmative by a preponderance of the evidence, the offense is a felony of the second degree.~~

#### CHAPTER 21. SEXUAL OFFENSES

Sec. 21.01. DEFINITIONS. In this chapter:

- (1) "Deviate sexual intercourse" means:
  - (A) any contact between any part of the genitals of one person and the mouth or anus of another person; or
  - (B) the penetration of the genitals or the anus of another person with an object.
- (2) "Sexual contact" means any touching of the anus, breast, or any part of the genitals of another person with intent to arouse or gratify the sexual desire of any person.

(3) "Sexual intercourse" means any penetration of the female sex organ by the male sex organ.

Sec. 21.06. HOMOSEXUAL CONDUCT. (a) A person commits an offense if he engages in deviate sexual intercourse with another individual of the same sex.

(b) An offense under this section is a Class C misdemeanor.

Sec. 21.07. PUBLIC LEWDNESS. (a) A person commits an offense if he knowingly engages in any of the following acts in a public place or, if not in a public place, he is reckless about whether another is present who will be offended or alarmed by his ~~act~~:

- (1) ~~[an]~~ act of sexual intercourse;
- (2) ~~[an]~~ act of deviate sexual intercourse;
- (3) ~~[an]~~ act of sexual contact; ~~or~~
- (4) ~~[an]~~ act involving contact between the person's mouth or genitals and the anus or genitals of an animal or fowl.

(b) An offense under this section is a Class A misdemeanor.

Sec. 21.08. INDECENT EXPOSURE. (a) A person commits an offense if he exposes his anus or any part of his genitals with intent to arouse or gratify the sexual desire of any person, and he is reckless about whether another is present who will be offended or alarmed by his act.

(b) An offense under this section is a Class B misdemeanor.

Sec. 21.11. INDECENCY WITH A CHILD. (a) A person commits an offense if, with a child younger than 17 years and not his spouse, whether the child is of the same or opposite sex, he:

- (1) engages in sexual contact with the child; or
- (2) exposes his anus or any part of his genitals, knowing the child is present, with intent to arouse or gratify the sexual desire of any person.

(b) ~~It is a defense to prosecution under this section that the child was at the time of the alleged offense 14 years or older and had, prior to the time of the alleged offense, engaged promiscuously in:~~

- ~~[(1) sexual intercourse;~~
- ~~[(2) deviate sexual intercourse;~~
- ~~[(3) sexual contact; or~~
- ~~[(4) indecent exposure as defined in Subsection (a)(2) of this~~

~~section;~~

~~[(c)]~~ It is an affirmative defense to prosecution under this section that the actor:

- (1) was not more than two years older than the victim and of the opposite sex; and
- (2) did not use duress, force, or a threat against the victim at the time of the offense.

~~[(c) [(d)]]~~ An offense under Subsection (a)(1) ~~[of this section]~~ is a felony of the second degree and an offense under Subsection (a)(2) ~~[of this section]~~ is a felony of the third degree.

#### CHAPTER 22. ASSAULTIVE OFFENSES

Sec. 22.01. ASSAULT. (a) A person commits an offense if the person:

- (1) intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse; ~~[or]~~
- (2) intentionally or knowingly threatens another with imminent bodily injury, including the person's spouse; or
- (3) intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative.

(b) An offense under Subsection (a)(1) ~~[of this section]~~ is a Class A misdemeanor ~~[unless:~~

~~[(1) the offense is committed by the owner or an employee of an institution described in Section 242.002(6), Health and Safety Code, or a person providing medical or psychiatric treatment at an institution described in that section, and the offense is committed by causing bodily injury to a patient or resident of an institution described in that section, in which event the offense is a felony of the third degree;~~

~~[(2) the offense is committed by the owner or an employee of a facility, except a facility operated by the Texas Youth Commission or the Texas Department of Corrections, described in Section 242.003(a)(6), Health and Safety Code, or a person providing medical or psychiatric treatment at a facility, except a facility operated by the Texas Youth Commission or the Texas Department of Corrections, described in that section, and the offense is committed by causing bodily injury to a patient~~

~~or resident of a facility, except a facility operated by the Texas Youth Commission or the Texas Department of Corrections, described in that section, in which event the offense is a felony of the third degree; or~~

~~[(3) the offense is committed against a family member and the actor has been previously convicted under this section for an offense against a family member two or more times, in which event the offense is a felony of the third degree].~~

(c) An offense under Subsection (a)(2) or (3) ~~[of this section]~~ is a Class C misdemeanor ~~[unless:~~

~~[(1) the offense is committed by the owner or an employee of an institution described in Section 242.002(6), Health and Safety Code, or a person providing medical or psychiatric treatment at an institution described in that section, and the offense is committed by threatening a patient or resident of an institution described in that section with bodily injury, in which event the offense is a Class B misdemeanor; or~~

~~[(2) the offense is committed by the owner or an employee of a facility, except a facility operated by the Texas Youth Commission or the Texas Department of Corrections, described in Section 242.003(a)(6), Health and Safety Code, or a person providing medical or psychiatric treatment at a facility, except a facility operated by the Texas Youth Commission or the Texas Department of Corrections, described in that section, and the offense is committed by threatening a patient or resident of a facility, except a facility operated by the Texas Youth Commission or the Texas Department of Corrections, described in that section with bodily injury, in which event the offense is a Class B misdemeanor; or~~

~~[(2) the offense is committed by the owner or an employee of a facility, except a facility operated by the Texas Youth Commission or the institutional division of the Texas Department of Criminal Justice, described in Section 242.002, Health and Safety Code, or a person providing medical or psychiatric treatment at a facility, except a facility operated by the Texas Youth Commission or the institutional division, described in that section, and the offense is committed by threatening a patient or resident of a facility, except a facility operated by the Texas Youth Commission or the institutional division, described in that section with bodily injury, in which event the offense is a Class B misdemeanor;~~

~~[(3) the offense is committed against a classroom teacher, counselor, principal, or other similar instructional or administrative employee of a primary or secondary school accredited by the Texas Education Agency, other than the Windham Schools, while engaged in performing his educational duties, in which event the offense is a Class B misdemeanor; or~~

~~[(4) the offense is committed against a family member and the actor has been previously convicted under this section for an offense against a family member:~~

~~[(A) one time, in which event the offense is a Class B misdemeanor;~~

~~[(B) two times, in which event the offense is a Class A misdemeanor; or~~

~~[(C) more than two times, in which event the offense is a felony of the third degree].~~

~~[(d) An offense under Subsection (a)(3) of this section is a Class C misdemeanor unless:~~

~~[(1) the offense is committed against a classroom teacher, counselor, principal, or other similar instructional or administrative employee of a primary or secondary school accredited by the Texas Education Agency while engaged in performing his educational duties, in which event the offense is a Class B misdemeanor; or~~

~~[(2) the offense is committed against a family member and the actor has been previously convicted under this section for an offense against a family member;~~

~~[(A) one time, in which event the offense is a Class B misdemeanor;~~

~~[(B) two times, in which event the offense is a Class A misdemeanor; or~~

~~[(C) more than two times, in which event the offense is a felony of the third degree.~~

~~[(e) In this section, "family" has the meaning assigned by Section 71.01, Family Code].~~

Sec. 22.011. SEXUAL ASSAULT. (a) A person commits an offense if the person:

(1) intentionally or knowingly:

(A) causes the penetration of the anus or female sexual organ of another person by any means, without that person's consent;

(B) causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or

(C) causes the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or

(2) intentionally or knowingly:

(A) causes the penetration of the anus or female sexual organ of a child by any means;

(B) causes the penetration of the mouth of a child by the sexual organ of the actor;

(C) causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or

(D) causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor.

(b) A sexual assault under Subsection (a)(1) ~~[of this section]~~ is without the consent of the other person if:

(1) the actor compels the other person to submit or participate by the use of physical force or violence;

(2) the actor compels the other person to submit or participate by threatening to use force or violence against the other person, and the other person believes that the actor has the present ability to execute the threat;

(3) the other person has not consented and the actor knows the other person is unconscious or physically unable to resist;

(4) the actor knows that as a result of mental disease or defect the other person is at the time of the sexual assault incapable either of appraising the nature of the act or of resisting it;

(5) the other person has not consented and the actor knows the other person is unaware that the sexual assault is occurring;

(6) the actor has intentionally impaired the other person's power to appraise or control the other person's conduct by administering any substance without the other person's knowledge; ~~or~~

(7) the actor compels the other person to submit or participate by threatening to use force or violence against any person, and the other person believes that the actor has the ability to execute the threat; ~~or~~

(8) the actor is a public servant who coerces the other person to submit or participate.

(c) In this section:

(1) "Child" means a person younger than 17 years of age who is not the spouse of the actor.

(2) "Spouse" means a person who is legally married to another, except that persons married to each other are not treated as spouses if they do not reside together or if there is an action pending between them for dissolution of the marriage or for separate maintenance.

(d) It is a defense to prosecution under Subsection (a)(2) ~~[of this section]~~ that:

~~[(1) the child was at the time of the offense 14 years of age or older and had prior to the time of the offense engaged promiscuously in conduct described in that subsection; or~~

~~[(2)] the conduct consisted of medical care for the child and did not include any contact between the anus or sexual organ of the child and the mouth, anus, or sexual organ of the actor or a third party.~~

(e) It is an affirmative defense to prosecution under Subsection (a)(2) ~~[of this section]~~ that the actor was not more than three ~~[two]~~ years older than the victim, and the victim was a child of 14 years of age or older.

(f) An offense under this section is a felony of the second degree.

~~[(g) A prosecution against a spouse under this section requires a showing of bodily injury or the threat of bodily injury.~~

~~[Sec. 22.012. INTENTIONALLY EXPOSING ANOTHER TO AIDS OR HIV. (a) A person commits an offense if the person, knowing that he or she has AIDS or is a carrier of HIV and with intent to cause serious bodily injury or death, intentionally engages in conduct reasonably likely to result in the transfer of the actor's own blood, bodily fluids containing visible blood, semen, or vaginal secretions into the bloodstream of another; or through the other person's skin or other membrane, except during in utero transmission of blood or bodily fluids, and:~~

~~[(1) the other person did not consent to the transfer of blood, bodily fluids containing blood, semen, or vaginal secretions; or~~

~~[(2) the other person consented to the transfer but at the time of giving consent had not been informed by the actor that the actor had AIDS or was a carrier of HIV.~~

~~[(b) In this section, "AIDS" and "HIV" have the meanings assigned by Section 81.101, Health and Safety Code.~~

~~[(c) An offense under this section is a felony of the third degree.]~~

Sec. 22.02. AGGRAVATED ASSAULT. (a) A person commits an offense if the person commits assault as defined in Section 22.01 ~~[of this code]~~ and the person:

(1) causes serious bodily injury to another, including the person's spouse; ~~or~~

(2) ~~[threatens with a deadly weapon or threatens to cause bodily injury or causes bodily injury to a member of the Board of Pardons and Paroles or the Texas Board of Criminal Justice, an employee of the pardons and paroles division of the Texas Department of Criminal Justice, an employee of the Windham Schools, a peace officer, or a jailer, guard, or other employee of a municipal or county jail, the institutional division of the Texas Department of Criminal Justice, or a correctional facility authorized by Subchapter F, Chapter 351, Local Government Code or Chapter 495, Government Code, when the person knows or has been informed the person assaulted is a member of the Board of Pardons and Paroles or the Texas Board of Criminal Justice, an employee of the pardons and paroles division, an employee of the Windham Schools, a peace officer, or a jailer, guard, or other employee;~~

~~[(A) while the member of the Board of Pardons and Paroles or Texas Board of Criminal Justice, employee of the pardons and paroles division, employee of the Windham Schools, peace officer, jailer, guard, or other employee is lawfully discharging an official duty; or~~

~~[(B) in retaliation for or on account of an exercise of official power or performance of an official duty as a member of the Board of Pardons and Paroles or Texas Board of Criminal Justice, an employee of the pardons and paroles division, an employee of the Windham Schools, a peace officer, or a jailer, guard, or other employee; or~~

~~[(3) causes bodily injury to a participant in a court proceeding when the person knows or has been informed the person assaulted is a participant in a court proceeding;~~

~~[(A) while the injured person is lawfully discharging an official duty; or~~

~~[(B) in retaliation for or on account of the injured person's having exercised an official power or performed an official duty as a participant in a court proceeding; or~~

~~[(4) uses or exhibits a deadly weapon during the commission of the assault.~~

(b) ~~[The actor is presumed to have known the person assaulted was a peace officer if he was wearing a distinctive uniform indicating his employment as a peace officer.~~

~~[(c)] An offense under this section is a felony of the second [third] degree, except that ~~[unless the offense is committed under Subdivision (2) of Subsection (a) of this section and the person uses a deadly weapon, in which event]~~ the offense is a felony of the first degree if the offense is committed:~~

(1) by a public servant acting under color of the servant's office or employment;



(2) against a person the actor knows is a public servant while the public servant is lawfully discharging an official duty, or in retaliation or on account of an exercise of official power or performance of an official duty as a public servant; or

(3) in retaliation against or on account of the service of another as a witness, prospective witness, informant, or person who has reported the occurrence of a crime.

(c) The actor is presumed to have known the person assaulted was a public servant if the person was wearing a distinctive uniform or badge indicating the person's employment as a public servant.

~~[(d) A person commits an offense if the person commits assault as defined in Section 22.01 of this code and the person threatens with a deadly weapon or causes serious bodily injury to an officer employed by a community supervision and corrections department, an employee of a community corrections facility operated by or for a community supervision and corrections department and listed in Section 6, Article 42.13, Code of Criminal Procedure, a juvenile probation officer, or an employee of a juvenile probation department or a juvenile detention center:~~

~~[(1) while the officer or employee is acting in the lawful discharge of an official duty; or~~

~~[(2) in retaliation for or on account of an exercise of official power or performance of an official duty by the officer or employee.]~~

Sec. 22.021. AGGRAVATED SEXUAL ASSAULT. (a) A person commits an offense:

(A) intentionally or knowingly:

(i) causes the penetration of the anus or female sexual organ of another person by any means, without that person's consent;

(ii) causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or

(iii) causes the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or

(B) intentionally or knowingly:

(i) causes the penetration of the anus or female sexual organ of a child by any means;

(ii) causes the penetration of the mouth of a child by the sexual organ of the actor;

(iii) causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or

(iv) causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor; and

(2) if:

(A) the person:

(i) causes serious bodily injury or attempts to cause the death of the victim or another person in the course of the same criminal episode;

(ii) by acts or words places the victim in fear that death, serious bodily injury, or kidnapping will be imminently inflicted on any person;

(iii) by acts or words occurring in the presence of the victim threatens to cause the death, serious bodily injury, or kidnapping of any person; or

(iv) uses or exhibits a deadly weapon in the course of the same criminal episode; or

(B) the victim is younger than 14 years of age.

(b) In this section, "child" has the meaning assigned that term by Section 22.011(c) ~~[of this code]~~.

(c) An aggravated sexual assault under this section is without the consent of the other person if the aggravated sexual assault occurs under the same circumstances listed in Section 22.011(b) ~~[of this code]~~.

(d) ~~[The defense provided by Section 22.011(d)(1) of this code and the affirmative defense provided by Section 22.011(c) of this code do not apply to this section.]~~ The defense provided by Section 22.011(d) applies ~~[(d)(2) of this section does apply]~~ to this section.

(e) An offense under this section is a felony of the first degree.

~~[Sec. 22.03. DEADLY ASSAULT ON LAW ENFORCEMENT OR CORRECTIONS OFFICER, MEMBER OR EMPLOYEE OF BOARD OF PARDONS AND PAROLES, COURT PARTICIPANT, PROBATION PERSONNEL, OR EMPLOYEE OF TEXAS YOUTH COMMISSION. (a) A person commits an offense if, with a deadly weapon, he intentionally or knowingly causes serious bodily injury:~~

~~[(1) to a peace officer, a jailer, a guard, or other employee of a municipal or county jail, the institutional division of the Texas Department of Criminal Justice, or a correctional facility authorized by Subchapter F, Chapter 351, Local Government Code, or Chapter 495, Government Code; a member of the Board of Pardons and Paroles or the Texas Board of Criminal Justice, an employee of the Windham Schools, or an employee of the pardons and paroles division of the Texas Department of Criminal Justice, where he knows or has been informed the person assaulted is a peace officer, jailer, guard, other employee, member of the Board of Pardons and Paroles or the Texas Board of Criminal Justice, employee of the Windham Schools, or employee of the pardons and paroles division;~~

~~[(A) while the peace officer, jailer, guard, other employee, member of the Board of Pardons and Paroles or the Texas Board of Criminal Justice, or employee of the pardons and paroles division is acting in the lawful discharge of an official duty; or~~

~~[(B) in retaliation for or on account of an exercise of official power or performance of an official duty as a peace officer, jailer, guard, other employee, member of the Board of Pardons and Paroles or the Texas Board of Criminal Justice, employee of the Windham Schools, or employee of the pardons and paroles division; or~~

~~[(2) to a participant in a court proceeding when he knows or has been informed that the person assaulted is a participant in a court proceeding;~~

~~[(A) while the injured person is in the lawful discharge of official duty; or~~

~~[(B) in retaliation for or on account of the injured person's having exercised an official power or performed an official duty as a participant in a court proceeding;~~

~~[(b) The actor is presumed to have known the person assaulted was a peace officer if he was wearing a distinctive uniform indicating his employment as a peace officer;~~

~~[(c) An offense under this section is a felony of the first degree;~~

~~[(d) A person commits an offense if, with a deadly weapon, the person intentionally or knowingly causes serious bodily injury to an officer employed by a community supervision and corrections department, an employee of a community corrections facility operated by or for a community supervision and corrections department and listed in Section 6, Article 42.13, Code of Criminal Procedure, a juvenile probation officer, or an employee of a juvenile probation department or a juvenile detention center;~~

~~[(1) while the officer or employee is acting in the lawful discharge of an official duty; or~~

~~[(2) in retaliation for or on account of an exercise of official power or performance of an official duty by the officer or employee;~~

~~[(e) A person commits an offense if, with a deadly weapon, the person intentionally or knowingly causes serious bodily injury to an employee of the Texas Youth Commission;~~

~~[(1) while the employee is acting in the lawful discharge of an official duty; or~~

~~[(2) in retaliation for or on account of an exercise of official power or performance of an official duty by the employee.]~~

Sec. 22.04. INJURY TO A CHILD, ELDERLY INDIVIDUAL, OR INVALID. (a) A person commits an offense if he intentionally, knowingly, recklessly, or with criminal negligence, by act or intentionally, knowingly, or recklessly by omission, causes to a child, elderly individual, or invalid individual:

(1) serious bodily injury;

(2) serious ~~[physical or]~~ mental deficiency, ~~[or] impairment, or injury; or~~

(3) ~~[disfigurement or deformity; or~~

~~[(4)]~~ bodily injury.

(b) An omission that causes a condition described by Subsections (a)(1) through (a)(3) ~~[(a)(4) of this section]~~ is conduct constituting an offense under this section if:

(1) the actor has a legal or statutory duty to act; or

(2) the actor has assumed care, custody, or control of a child, elderly individual, or invalid individual.

(c) In this section:

(1) "Child" means a person 14 years of age or younger.

(2) "Elderly individual" means a person 65 years of age or older.

(3) "Invalid individual" means a person older than 14 years of age who by reason of age or physical or mental disease, defect, or injury is

substantially unable to protect himself from harm or to provide food, shelter, or medical care for himself.

(d) The actor has assumed care, custody, or control if he has by act, words, or course of conduct acted so as to cause a reasonable person to conclude that he has accepted responsibility for protection, food, shelter, and medical care for a child, elderly individual, or invalid individual.

(e) An offense under Subsection (a)(1) ~~or (2) of this section~~ is a felony of the first degree when the conduct is committed intentionally or knowingly. When the conduct is engaged in recklessly it shall be a felony of the ~~second~~ third degree.

(f) An offense under Subsection ~~(a)(3)~~ (a)(3) ~~[(a)(4) of this section]~~ is a felony of the third degree when the conduct is committed intentionally or knowingly. When the conduct is engaged in recklessly it shall be a state jail felony ~~[Class A misdemeanor]~~.

(g) An offense under Subsection (a) ~~[of this section]~~ when the person acts with criminal negligence shall be a state jail felony ~~[Class A misdemeanor]~~.

(h) A person who is subject to prosecution under both this section and another section of this code may be prosecuted under either or both sections. Section 3.04 ~~[of this code]~~ does not apply to criminal episodes prosecuted under both this section and another section of this code. If a criminal episode is prosecuted under both this section and another section of this code and sentences are assessed for convictions under both sections, the sentences shall run concurrently.

(i) It is an affirmative defense to prosecution under Subsection (b)(2) ~~[of this section]~~ that before the offense the actor:

(1) notified in person the child, elderly individual, or invalid individual that he would no longer provide any of the care described by Subsection (d) ~~[of this section]~~; and

(2) notified in writing the parents or person other than himself acting in loco parentis to the child, elderly individual, or invalid individual that he would no longer provide any of the care described by Subsection (d) ~~[of this section]~~; or

(3) notified in writing the Texas Department of Human Services that he would no longer provide any of the care set forth in Subsection (d) ~~[of this section]~~.

(j) Written notification under Subsection (i)(2) or (i)(3) ~~[of this section]~~ is not effective unless it contains the name and address of the actor, the name and address of the child, elderly individual, or invalid individual, the type of care provided by the actor, and the date the care was discontinued.

(k)(1) It is a defense to prosecution under this section that the act or omission consisted of:

(A) reasonable medical care occurring under the direction of or by a licensed physician; or

(B) emergency medical care administered in good faith and with reasonable care by a person not licensed in the healing arts.

(2) It is an affirmative defense to prosecution under this section that the act or omission was based on treatment in accordance with the

tenets and practices of a recognized religious method of healing with a generally accepted record of efficacy. It is an affirmative defense to prosecution for a person charged with an act of omission under this section causing to a child, elderly individual, or invalid individual a condition described by Subsection (a)(1), (2), or (3) that the person:

(1) was a victim of family violence, as that term is defined by Section 71.01, Family Code, committed by a person who is also charged with an offense against the child, elderly individual, or invalid individual under this section or any other section of this title;

(2) did not cause a condition described by Subsection (a)(1), (2), or (3); and

(3) did not reasonably believe at the time of the omission that an effort to prevent the person also charged with an offense against the child, elderly individual, or invalid individual from committing the offense would have an effect.

Sec. 22.041. ABANDONING OR ENDANGERING CHILD. (a) In this section, "abandon" means to leave a child in any place without providing reasonable and necessary care for the child, under circumstances under which no reasonable, similarly situated adult would leave a child of that age and ability.

(b) A person commits an offense if, having custody, care, or control of a child younger than 15 years, he intentionally abandons the child in any place under circumstances that expose the child to an unreasonable risk of harm.

(c) A person commits an offense if he intentionally, knowingly, recklessly, or with criminal negligence, by act or omission, engages in conduct that places a child younger than 15 years in imminent danger of death, bodily injury, or physical or mental impairment.

(d) Except as provided by Subsection (e) [~~of this section~~], an offense under Subsection (b) [~~of this section~~] is:

(1) a state jail felony [~~Class A misdemeanor~~] if the actor abandoned the child with intent to return for the child; or

(2) a felony of the third degree if the actor abandoned the child without intent to return for the child.

(e) An offense under Subsection (b) [~~of this section~~] is a felony of the second degree if the actor abandons the child under circumstances that a reasonable person would believe would place the child in imminent danger of death, bodily injury, or physical or mental impairment.

(f) An offense under Subsection (c) [~~of this section~~] is a state jail felony [~~Class A misdemeanor~~].

Sec. 22.05. RECKLESS CONDUCT. (a) A person commits an offense if he recklessly engages in conduct that places another in imminent danger of serious bodily injury.

(b) Recklessness and danger are presumed if the actor knowingly pointed a firearm at or in the direction of another whether or not the actor believed the firearm to be loaded.

(c) An offense under Subsection (a) [~~this section~~] is a Class A [~~B~~] misdemeanor.

Sec. 22.06. CONSENT AS DEFENSE TO ASSAULTIVE CONDUCT. The victim's effective consent or the actor's reasonable belief that the victim consented to the actor's conduct is a defense to prosecution under Section 22.01 (Assault), 22.02 (Aggravated Assault), or 22.05 (Reckless Conduct) ~~[of this code]~~ if:

- (1) the conduct did not threaten or inflict serious bodily injury; or
- (2) the victim knew the conduct was a risk of:
  - (A) his occupation;
  - (B) recognized medical treatment; or
  - (C) a scientific experiment conducted by recognized

methods.

Sec. 22.07. TERRORISTIC THREAT. (a) A person commits an offense if he threatens to commit any offense involving violence to any person or property with intent to:

- (1) cause a reaction of any type to his threat by an official or volunteer agency organized to deal with emergencies;
- (2) place any person in fear of imminent serious bodily injury; or
- (3) prevent or interrupt the occupation or use of a building; room; place of assembly; place to which the public has access; place of employment or occupation; aircraft, automobile, or other form of conveyance; or other public place; or
- (4) cause impairment or interruption of public communications, public transportation, public water, gas, or power supply or other public service.

(b) An offense under Subdivision (1) or (2) of Subsection (a) ~~[of this section]~~ is a Class B misdemeanor. An offense under Subdivision (3) of Subsection (a) ~~[of this section]~~ is a Class A misdemeanor. An offense under Subdivision (4) of Subsection (a) ~~[of this section]~~ is a felony of the third degree.

Sec. 22.08. AIDING SUICIDE. (a) A person commits an offense if, with intent to promote or assist the commission of suicide by another, he aids or attempts to aid the other to commit or attempt to commit suicide.

(b) An offense under this section is a Class C misdemeanor unless the actor's conduct causes suicide or attempted suicide that results in serious bodily injury, in which event the offense is a state jail felony ~~[of the third degree]~~.

Sec. 22.09. TAMPERING WITH CONSUMER PRODUCT. (a) In this section:

(1) "Consumer Product" means any product offered for sale to or for consumption by the public and includes "food" and "drugs" as those terms are defined in Section 431.002, Health and Safety Code.

(2) "Tamper" means to alter or add a foreign substance to a consumer product to make it probable that the consumer product will cause serious bodily injury.

(b) A person commits an offense if he knowingly or intentionally tampers with a consumer product knowing that the consumer product will be offered for sale to the public or as a gift to another.

(c) A person commits an offense if he knowingly or intentionally threatens to tamper with a consumer product with the intent to cause fear,

to affect the sale of the consumer product, or to cause bodily injury to any person.

(d) An offense under Subsection (b) ~~[of this section]~~ is a felony of the second degree unless a person suffers serious bodily injury, in which event it is a felony of the first degree. An offense under Subsection (c) ~~[of this section]~~ is a felony of the third degree.

~~[Sec. 22.10. LEAVING A CHILD IN A VEHICLE. (a) A person commits an offense if he intentionally or knowingly leaves a child in a motor vehicle for longer than five minutes, knowing that the child is:~~

~~[(1) younger than seven years of age; and~~

~~[(2) not attended by an individual in the vehicle who is 14 years of age or older.~~

~~[(b) An offense under this section is a Class C misdemeanor.]~~

#### TITLE 6. OFFENSES AGAINST THE FAMILY

##### CHAPTER 25. OFFENSES AGAINST THE FAMILY

Sec. 25.01. BIGAMY. (a) An individual commits an offense if:

(1) he is legally married and he:

(A) purports to marry or does marry a person other than his spouse in this state, or any other state or foreign country, under circumstances that would, but for the actor's prior marriage, constitute a marriage; or

(B) lives with a person other than his spouse in this state under the appearance of being married; or

(2) he knows that a married person other than his spouse is married and he:

(A) purports to marry or does marry that person in this state, or any other state or foreign country, under circumstances that would, but for the person's prior marriage, constitute a marriage; or

(B) lives with that person in this state under the appearance of being married.

(b) For purposes of this section, "under the appearance of being married" means holding out that the parties are married with cohabitation and an intent to be married by either party.

(c) It is a defense to prosecution under Subsection (a)(1) ~~[of this section]~~ that the actor reasonably believed that his marriage was void or had been dissolved by death, divorce, or annulment.

(d) For the purposes of this section, the lawful wife or husband of the actor may testify both for or against the actor concerning proof of the original marriage.

(e) An offense under this section is a Class A misdemeanor ~~[felony of the third degree]~~.

Sec. 25.02. Prohibited Sexual Conduct ~~[incest]~~. (a) An individual commits an offense if he engages in sexual intercourse or deviate sexual intercourse with a person he knows to be, without regard to legitimacy:

(1) his ancestor or descendant by blood or adoption;

(2) his stepchild or stepparent, while the marriage creating that relationship exists;

(3) his parent's brother or sister of the whole or half blood;

(4) his brother or sister of the whole or half blood or by adoption;

or

(5) the children of his brother or sister of the whole or half blood or by adoption.

(b) For purposes of this section:

(1) "Deviate sexual intercourse" means any contact between the genitals of one person and the mouth or anus of another person with intent to arouse or gratify the sexual desire of any person.

(2) "Sexual intercourse" means any penetration of the female sex organ by the male sex organ.

(c) An offense under this section is a felony of the third degree.

Sec. 25.03. INTERFERENCE WITH CHILD CUSTODY. (a) A person commits an offense if he takes or retains a child younger than 18 years when he:

(1) knows that his taking or retention violates the express terms of a judgment or order of a court disposing of the child's custody; or

(2) has not been awarded custody of the child by a court of competent jurisdiction, knows that a suit for divorce or a civil suit or application for habeas corpus to dispose of the child's custody has been filed, and takes the child out of the geographic area of the counties composing the judicial district if the court is a district court or the county if the court is a statutory county court, without the permission of the court and with the intent to deprive the court of authority over the child.

(b) A noncustodial parent commits an offense if, with the intent to interfere with the lawful custody of a child younger than 18 years, he knowingly entices or persuades the child to leave the custody of the custodial parent, guardian, or person standing in the stead of the custodial parent or guardian of the child.

(c) It is a defense to prosecution under Subsection (a)(2) [~~of this section~~] that the actor returned the child to the geographic area of the counties composing the judicial district if the court is a district court or the county if the court is a statutory county court, within three days after the date of the commission of the offense.

(d) An offense under this section is a state jail felony [~~of the third degree~~].

Sec. 25.031. AGREEMENT TO ABDUCT FROM CUSTODY. (a) A person commits an offense if the person agrees, for remuneration or the promise of remuneration, to abduct a child younger than 18 years of age by force, threat of force, misrepresentation, stealth, or unlawful entry, knowing that the child is under the care and control of a person having custody or physical possession of the child under a court order or under the care and control of another person who is exercising care and control with the consent of a person having custody or physical possession under a court order.

(b) An offense under this section is a state jail felony [~~of the third degree~~].

Sec. 25.04. ENTICING A CHILD. (a) A person commits an offense if, with the intent to interfere with the lawful custody of a child younger than 18 years, he knowingly entices, persuades, or takes the child from the



custody of the parent or guardian or person standing in the stead of the parent or guardian of such child.

(b) An offense under this section is a Class B misdemeanor.

Sec. 25.05. CRIMINAL NONSUPPORT. (a) An individual commits an offense if he intentionally or knowingly fails to provide support for his child younger than 18 years of age, or for his child who is the subject of a court order requiring the individual to support the child.

(b) For purposes of this section, "child" includes a child born out of wedlock whose paternity has either been acknowledged by the actor or has been established in a civil suit under the Family Code or the law of another state.

(c) Under this section, a conviction may be had on the uncorroborated testimony of a party to the offense.

(d) It is an affirmative defense to prosecution under this section that the actor could not provide support for his child.

(e) The pendency of a prosecution under this section does not affect the power of a court to enter an order for child support under the Family Code.

(f) Except as provided in Subsection (g) ~~[of this section]~~, an offense under this section is a Class A misdemeanor.

(g) An offense under this section is a felony of the third degree if the actor:

~~[(1) has been convicted one or more times under this section; or~~  
[(2)] commits the offense and leaves the state to reside [while residing] in another state.

Sec. 25.06. ~~[Solicitation of a Child. (a) A person commits an offense if he entices, persuades, or invites a child younger than 14 years to enter a vehicle, building, structure, or enclosed area with intent to engage in or propose engaging in sexual intercourse, deviate sexual intercourse, or sexual contact with the child or with intent to expose his anus or any part of his genitals to the child.~~

~~[(b) The definitions of "sexual intercourse," "deviate sexual intercourse," and "sexual contact" in Chapter 21 of this code apply to this section.~~

~~[(c) An offense under this section is a Class A misdemeanor unless the actor takes the child out of the county of residence of the parent, guardian, or person standing in the stead of the parent or guardian of the child, in which event the offense is a felony of the third degree.~~

~~[Sec. 25.07.]~~ HARBORING RUNAWAY CHILD. (a) A person commits an offense if he knowingly harbors a child and he is criminally negligent about whether the child:

(1) is younger than 18 years; and

(2) has escaped from the custody of a peace officer, a probation officer, the Texas Youth Council, or a detention facility for children, or is voluntarily absent from the child's home without the consent of the child's parent or guardian for a substantial length of time or without the intent to return.

(b) It is a defense to prosecution under this section that the actor was related to the child within the second degree by consanguinity or affinity, as determined under Article 5996h, Revised Statutes.

(c) It is a defense to prosecution under this section that the actor notified:

(1) the person or agency from which the child escaped or a law enforcement agency of the presence of the child within 24 hours after discovering that the child had escaped from custody; or

(2) a law enforcement agency or a person at the child's home of the presence of the child within 24 hours after discovering that the child was voluntarily absent from home without the consent of the child's parent or guardian.

(d) An offense under this section is a Class A misdemeanor.

(e) On the receipt of a report from a peace officer, probation officer, the Texas Youth Council, a foster home, or a detention facility for children that a child has escaped its custody or upon receipt of a report from a parent, guardian, conservator, or legal custodian that a child is missing, a law enforcement agency shall immediately enter a record of the child into the National Crime Information Center.

Sec. ~~25.07~~ [25.08]. VIOLATION OF A PROTECTIVE ORDER. (a) A person commits an offense if, in violation of an order issued under Section 3.581, Section 71.11, or Section 71.12, Family Code, the person knowingly or intentionally:

(1) commits family violence;

(2) directly communicates with a member of the family or household in a threatening or harassing manner, communicates a threat through any person to a member of the family or household, and, if the order prohibits any communication with a member of the family or household, communicates in any manner with the member of the family or household except through the person's attorney or a person appointed by the court; or

(3) goes to or near any of the following places as specifically described in the protective order:

(A) the residence or place of employment or business of a member of the family or household; or

(B) any child care facility, residence, or school where a child protected by the protective order normally resides or attends.

(b) For the purposes of this section, "family violence," "family," "household," and "member of a household" have the meanings assigned by Section 71.01, Family Code.

(c) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section or under both sections.

(d) Reconciliatory actions or agreements made by persons affected by a protective order do not affect the validity of the order or the duty of a peace officer to enforce this section.

(e) A peace officer investigating conduct that may constitute an offense under this section for a violation of a protective order may not arrest a person protected by that order for a violation of that order.

(f) It is not a defense to prosecution under this section that certain information has been excluded, as provided by Section 71.111, Family Code, from an order to which this section applies.

(g) An offense under this section is a Class A misdemeanor. ~~[However, if it is shown at the trial for the offense that the actor has been previously convicted under this section two or more times, the offense is a felony of the third degree.]~~

Sec. 25.08 [25.11]. SALE OR PURCHASE OF CHILD. (a) A person commits an offense if he:

(1) possesses a child younger than 18 years of age or has the custody, conservatorship, or guardianship of a child younger than 18 years of age, whether or not he has actual possession of the child, and he offers to accept, agrees to accept, or accepts a thing of value for the delivery of the child to another or for the possession of the child by another for purposes of adoption; or

(2) offers to give, agrees to give, or gives a thing of value to another for acquiring or maintaining the possession of a child for the purpose of adoption.

(b) It is an exception to the application of this section that the thing of value is:

(1) a fee paid to a child-placing agency as authorized by law;

(2) a fee paid to an attorney or physician for services rendered in the usual course of legal or medical practice; or

(3) a reimbursement of legal or medical expenses incurred by a person for the benefit of the child.

(c) An offense under this section is a felony of the third degree ~~[unless the actor has been convicted previously under this section, in which event the offense is a felony of the second degree].~~

TITLE 7. OFFENSES AGAINST PROPERTY  
CHAPTER 28. ARSON, CRIMINAL MISCHIEF, AND  
OTHER PROPERTY DAMAGE OR DESTRUCTION

Sec. 28.01. DEFINITIONS. In this chapter:

(1) "Habitation" means a structure or vehicle that is adapted for the overnight accommodation of persons and includes:

(A) each separately secured or occupied portion of the structure or vehicle; and

(B) each structure appurtenant to or connected with the structure or vehicle.

(2) "Building" means any structure or enclosure intended for use or occupation as a habitation or for some purpose of trade, manufacture, ornament, or use.

(3) "Property" means:

(A) real property;

(B) tangible or intangible personal property, including anything severed from land; or

(C) a document, including money, that represents or embodies anything of value.

(4) "Vehicle" includes any device in, on, or by which any person or property is or may be propelled, moved, or drawn in the normal course of commerce or transportation.

(5) "Open-space land" means real property that is undeveloped for the purpose of human habitation.

(6) "Controlled burning" means the burning of unwanted vegetation with the consent of the owner of the property on which the vegetation is located and in such a manner that the fire is controlled and limited to a designated area.

Sec. 28.02. ARSON. (a) A person commits an offense if he starts a fire or causes an explosion with intent to destroy or damage:

- (1) any vegetation, fence, or structure on open-space land; or
- (2) any building, habitation, or vehicle:

(A) knowing that it is within the limits of an incorporated city or town;

(B) knowing that it is insured against damage or destruction;

(C) knowing that it is subject to a mortgage or other security interest;

(D) knowing that it is located on property belonging to another;

(E) knowing that it has located within it property belonging to another; or

(F) when he is reckless about whether the burning or explosion will endanger the life of some individual or the safety of the property of another.

(b) It is an exception to the application of Subsection (a)(1) ~~[of this section]~~ that the fire or explosion was a part of the controlled burning of open-space land.

(c) It is a defense to prosecution under Subsection (a)(2)(A) ~~[of this section]~~ that prior to starting the fire or causing the explosion, the actor obtained a permit or other written authorization granted in accordance with a city ordinance, if any, regulating fires and explosions.

(d) An offense under this section is a felony of the second degree, unless bodily injury or death is suffered by any person by reason of the commission of the offense, in which event it is a felony of the first degree.

Sec. 28.03. CRIMINAL MISCHIEF. (a) A person commits an offense if, without the effective consent of the owner:

(1) he intentionally or knowingly damages or destroys the tangible property of the owner;

(2) he intentionally or knowingly tampers with the tangible property of the owner and causes pecuniary loss or substantial inconvenience to the owner or a third person; or

(3) he intentionally or knowingly makes markings, including inscriptions, slogans, drawings, or paintings, on the tangible property of the owner.

(b) Except as provided by Subsection (f), an offense under this section is:

- (1) a Class C misdemeanor if:

(A) the amount of pecuniary loss is less than \$20; or

(B) except as provided in Subdivision (3) ~~(4)~~ (B) ~~[of this subsection]~~, it causes substantial inconvenience to others;

(2) a Class B misdemeanor if the amount of pecuniary loss is \$50 ~~[\$20]~~ or more but less than \$500 ~~[\$200]~~;

(3) a Class A misdemeanor if the amount of pecuniary loss is:  
(A) \$500 [\$200] or more but less than \$1,500 [\$750]; or  
(B) less than \$1,500 and the actor causes in whole or in part impairment or interruption of public communications, public transportation, public water, gas, or power supply, or other public service, or causes to be diverted in whole, in part, or in any manner, including installation or removal of any device for any such purpose, any public communications, public water, gas, or power supply;

(4) a state jail felony [of the third degree] if:  
[(A)] the amount of pecuniary loss is \$1,500 [\$750] or more but less than \$20,000;

[(B)] regardless of the amount of pecuniary loss, the actor causes in whole or in part impairment or interruption of public communications, public transportation, public water, gas, or power supply, or other public service, or diverts, or causes to be diverted in whole, in part, or in any manner, including installation or removal of any device for such purpose, any public communications, public water, gas, or power supply;

[(C)] regardless of the amount of pecuniary loss, the property is one or more head of cattle, horses, sheep, swine, or goats;

[(D)] regardless of the amount of pecuniary loss, the property was a fence used for the production of cattle, horses, sheep, swine, or goats; or

[(E)] regardless of the amount of pecuniary loss, the damage or destruction was inflicted by branding one or more head of cattle, horses, sheep, swine, or goats.]

(5) a felony of the third [second] degree if the amount of the pecuniary loss is \$20,000 or more but less than \$100,000;

(6) a felony of the second degree if the amount of pecuniary loss is \$100,000 or more but less than \$200,000; or

(7) a felony of the first degree if the amount of pecuniary loss is \$200,000 or more.

(c) For the purposes of this section, it shall be presumed that a person [in whose name public communications, public water, gas, or power supply is or was last billed and] who is receiving the economic benefit of public communications, public water, gas, or power [said communication or] supply, has knowingly tampered with the tangible property of the owner if the communication or supply has been:

(1) diverted from passing through a metering device; or

(2) prevented from being correctly registered by a metering device;

or

(3) activated by any device installed to obtain public communications, public water, gas, or power supply without a metering device.

(d) The term "public communication, public transportation, public water, gas, or power supply, or other public service" shall mean, refer to, and include any such services subject to regulation by the Public Utility Commission of Texas, the Railroad Commission of Texas, or the Texas Water Commission or any such services enfranchised by the State of Texas or any political subdivision thereof.

(e) When more than one item of tangible property, belonging to one or more owners, is damaged, destroyed, or tampered with in violation of this section pursuant to one scheme or continuing course of conduct, the conduct may be considered as one offense, and the amounts of pecuniary loss to property resulting from the damage to, destruction of, or tampering with the property may be aggregated in determining the grade of the offense.

(f) An offense under this section is:

(1) a state jail felony ~~[of the third degree]~~ if the damage or destruction is inflicted on a place of worship or human burial, a public monument, or a community center that provides medical, social, or educational programs and the amount of the pecuniary loss to real property or to tangible personal property is ~~[\$20 or more but]~~ less than \$20,000[; or

~~[(2) a felony of the second degree if the damage or destruction is inflicted on a place of worship or a community center that provides medical, social, or educational programs and the amount of the pecuniary loss to real property or to tangible personal property is \$20,000 or more].~~

Sec. 28.04. RECKLESS DAMAGE OR DESTRUCTION. (a) A person commits an offense if, without the effective consent of the owner, he recklessly damages or destroys property of the owner.

(b) An offense under this section is a Class C misdemeanor.

Sec. 28.05. ACTOR'S INTEREST IN PROPERTY. It is no defense to prosecution under this chapter that the actor has an interest in the property damaged or destroyed if another person also has an interest that the actor is not entitled to infringe.

Sec. 28.06. AMOUNT OF PECUNIARY LOSS. (a) The amount of pecuniary loss under this chapter, if the property is destroyed, is:

(1) the fair market value of the property at the time and place of the destruction; or

(2) if the fair market value of the property cannot be ascertained, the cost of replacing the property within a reasonable time after the destruction.

(b) The amount of pecuniary loss under this chapter, if the property is damaged, is the cost of repairing or restoring the damaged property within a reasonable time after the damage occurred.

(c) The amount of pecuniary loss under this chapter for documents, other than those having a readily ascertainable market value, is:

(1) the amount due and collectible at maturity less any part that has been satisfied, if the document constitutes evidence of a debt; or

(2) the greatest amount of economic loss that the owner might reasonably suffer by virtue of the destruction or damage if the document is other than evidence of a debt.

(d) If the amount of pecuniary loss cannot be ascertained by the criteria set forth in Subsections (a) through (c) ~~[of this section]~~, the amount of loss is deemed to be greater than \$500 ~~[\$200]~~ but less than \$1,500 ~~[\$750]~~.

(e) If the actor proves by a preponderance of the evidence that he gave consideration for or had a legal interest in the property involved, the value of the interest so proven shall be deducted from:

- (1) the amount of pecuniary loss if the property is destroyed; or
- (2) the amount of pecuniary loss to the extent of an amount equal to the ratio the value of the interest bears to the total value of the property, if the property is damaged.

Sec. 28.07. INTERFERENCE WITH RAILROAD PROPERTY. (a) In this section:

(1) "Railroad property" means:

(A) a train, locomotive, railroad car, caboose, work equipment, rolling stock, safety device, switch, or connection that is owned, leased, operated, or possessed by a railroad; or

(B) a railroad track, rail, bridge, trestle, or right-of-way owned or used by a railroad.

(2) "Tamper" means to move, alter, or interfere with railroad property.

(b) A person commits an offense if the person:

(1) throws an object or discharges a firearm or weapon at a train or rail-mounted work equipment; or

(2) without the effective consent of the owner:

(A) enters or remains on railroad property, knowing that it is railroad property;

(B) tampers with railroad property;

(C) places an obstruction on a railroad track or right-of-way; or

(D) causes in any manner the derailment of a train, railroad car, or other railroad property that moves on tracks.

(c) An offense under Subsection (b)(1) ~~[of this section]~~ is a Class B misdemeanor unless the person causes bodily injury to another, in which event the offense is a felony of the third degree.

(d) An offense under Subsection (b)(2)(A) ~~[of this section]~~ is a Class C misdemeanor.

(e) An offense under Subsection (b)(2)(B), (b)(2)(C), or (b)(2)(D) ~~[of this section]~~ is a Class C misdemeanor unless the person causes pecuniary loss, in which event the offense is:

(1) a Class B misdemeanor if the amount of pecuniary loss is \$50 ~~[\$20]~~ or more but less than \$500 ~~[\$200]~~;

(2) a Class A misdemeanor if the amount of pecuniary loss is \$500 ~~[\$200]~~ or more but less than \$1,500 ~~[\$750]~~;

(3) a state jail felony ~~[of the third degree]~~ if the amount of pecuniary loss is \$1,500 ~~[\$750]~~ or more but less than \$20,000; ~~or~~

(4) a felony of the third ~~[second]~~ degree if the amount of the pecuniary loss is \$20,000 or more but less than \$100,000;

(5) a felony of the second degree if the amount of pecuniary loss is \$100,000 or more but less than \$200,000; or

(6) a felony of the first degree if the amount of the pecuniary loss is \$200,000 or more.

(f) The conduct described in Subsection (b)(2)(A) ~~[of this section]~~ is not an offense under this section if it is undertaken by an employee of the railroad or by a representative of a labor organization which represents or is seeking to represent the employees of the railroad as long as the

employee or representative has a right to engage in such conduct under the Railway Labor Act (45 U.S.C. Section 151 et seq.).

~~[Sec. 28.08. INTERFERENCE WITH ANIMALS OR ANIMAL FACILITIES. (a) In this section:~~

~~[(1) "Animal" means any nonhuman vertebrate animal used in agriculture, research, testing and exhibition, education, or food or fiber production, but does not include an animal held primarily as a pet.~~

~~[(2) "Animal facility" means any vehicle, building, structure, or premises where an animal is bred or where animals or records relating to animals are kept, handled, transported, housed, or exhibited.~~

~~[(3) "Tamper" means to move, alter, or interfere.~~

~~[(4) "Notice" means:~~

~~[(A) oral or written communication by the owner or someone with apparent authority to act for the owner;~~

~~[(B) fencing or other enclosure obviously designed to exclude intruders or to contain livestock; or~~

~~[(C) a sign or signs posted on the property or at the entrance to the building, reasonably likely to come to the attention of intruders, indicating that entry is forbidden.~~

~~[(b) A person commits an offense if the person, after notice is given and without the effective consent of the owner, intentionally or knowingly:~~

~~[(1) enters or remains in or on an animal facility;~~

~~[(2) makes markings, including inscriptions, slogans, drawings, or paintings, on an animal facility;~~

~~[(3) tampers with an animal facility;~~

~~[(4) damages or destroys an animal facility; or~~

~~[(5) removes, carries away, releases, or exercises control of an animal or property located in an animal facility.~~

~~[(c) An offense under Subsection (b)(1) or (2) of this section is a Class B misdemeanor unless the person causes bodily injury to another or carries a deadly weapon on or about his person during the commission of the offense, in which event the offense is a Class A misdemeanor.~~

~~[(d) An offense under Subsection (b)(3), (4), or (5) of this section is a Class C misdemeanor unless the person causes pecuniary loss, in which event the offense is:~~

~~[(1) a Class B misdemeanor if the amount of pecuniary loss is \$20 or more but less than \$200;~~

~~[(2) a Class A misdemeanor if the amount of pecuniary loss is \$200 or more but less than \$750;~~

~~[(3) a felony of the third degree if the amount of pecuniary loss is \$750 or more but less than \$20,000; or~~

~~[(4) a felony of the second degree if the amount of the pecuniary loss is \$20,000 or more.]~~

## CHAPTER 29. ROBBERY

Sec. 29.01. DEFINITIONS. In this chapter:

(1) "In the course of committing theft" means conduct that occurs in an attempt to commit, during the commission, or in immediate flight after the attempt or commission of theft.

(2) "Property" means:



(A) tangible or intangible personal property including anything severed from land; or

(B) a document, including money, that represents or embodies anything of value.

Sec. 29.02. ROBBERY. (a) A person commits an offense if, in the course of committing theft as defined in Chapter 31 ~~[of this code]~~ and with intent to obtain or maintain control of the property, he:

(1) intentionally, knowingly, or recklessly causes bodily injury to another; or

(2) intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.

(b) Except as provided by Subsection (c), an [An] offense under this section is a felony of the third [second] degree.

(c) An offense under this section is a felony of the second degree if it is shown on the trial of the offense that the actor caused bodily injury to another person or threatened or placed the other person in fear of imminent bodily injury or death, and the other person was:

(1) 65 years of age or older; or

(2) a disabled person.

(d) In this section, "disabled person" means an individual with a mental, physical, or developmental disability who is substantially unable to protect himself from harm.

Sec. 29.03. AGGRAVATED ROBBERY. (a) A person commits an offense if he commits robbery as defined in Section 29.02 ~~[of this code]~~, and he:

(1) causes serious bodily injury to another; ~~or~~

(2) uses or exhibits a deadly weapon~~;~~ ~~or~~

~~[(3) causes bodily injury to another person or threatens or places another person in fear of imminent bodily injury or death, if the other person is:~~

~~[(A) 65 years of age or older; or~~

~~[(B) a disabled person].~~

(b) An offense under this section is a felony of the first degree.

(c) In this section, "disabled person" means an individual with a mental, physical, or developmental disability who is substantially unable to protect himself from harm.

#### CHAPTER 30. BURGLARY AND CRIMINAL TRESPASS

Sec. 30.01. DEFINITIONS. In this chapter:

(1) "Habitation" means a structure or vehicle that is adapted for the overnight accommodation of persons, and includes:

(A) each separately secured or occupied portion of the structure or vehicle; and

(B) each structure appurtenant to or connected with the structure or vehicle.

(2) "Building" means any enclosed structure intended for use or occupation as a habitation or for some purpose of trade, manufacture, ornament, or use.

(3) "Vehicle" includes any device in, on, or by which any person or property is or may be propelled, moved, or drawn in the normal course

of commerce or transportation, except such devices as are classified as "habitation."

Sec. 30.02. BURGLARY. (a) A person commits an offense if, without the effective consent of the owner, he:

(1) enters a habitation, or a building (or any portion of a building) not then open to the public, with intent to commit a felony or theft; or

(2) remains concealed, with intent to commit a felony or theft, in a building or habitation; or

(3) enters a building or habitation and commits or attempts to commit a felony or theft.

(b) For purposes of this section, "enter" means to intrude:

(1) any part of the body; or

(2) any physical object connected with the body.

(c) Except as provided in Subsection (d) [~~of this section~~], an offense under this section is:

(1) a state jail felony if committed in a building other than a habitation; or

(2) a felony of the third degree if committed in a habitation [~~of the second degree~~].

(d) An offense [~~under this section~~] is a felony of the:

(1) second [~~first~~] degree if:

(A) [~~(1)~~] the building or [~~premises are a~~] habitation is occupied at the time of the offense; or

(B) [~~(2)~~] any party to the offense is armed with explosives or a deadly weapon; or

(2) first degree if [~~(3)~~] any party to the offense injures or attempts to injure anyone in effecting entry or while in the building or habitation or in immediate flight from the building or habitation.

Sec. 30.03. BURGLARY OF COIN-OPERATED OR COIN COLLECTION MACHINES. (a) A person commits an offense if, without the effective consent of the owner, he breaks or enters into any coin-operated machine, coin collection machine, or other coin-operated or coin collection receptacle, contrivance, apparatus, or equipment used for the purpose of providing lawful amusement, sales of goods, services, or other valuable things, or telecommunications with intent to obtain property or services.

(b) For purposes of this section, "entry" includes every kind of entry except one made with the effective consent of the owner.

(c) An offense under this section is a Class A misdemeanor.

Sec. 30.04. BURGLARY OF VEHICLES. (a) A person commits an offense if, without the effective consent of the owner, he breaks into or enters a vehicle or any part of a vehicle with intent to commit any felony or theft.

(b) For purposes of this section, "enter" means to intrude:

(1) any part of the body; or

(2) any physical object connected with the body.

(c) An offense under this section is a Class A misdemeanor [~~felony of the third degree~~].

Sec. 30.05. CRIMINAL TRESPASS. (a) A person commits an offense if he enters or remains on property or in a building of another without effective consent and he:

- (1) had notice that the entry was forbidden; or
- (2) received notice to depart but failed to do so.

(b) For purposes of this section:

- (1) "Entry" means the intrusion of the entire body.
- (2) "Notice" means:

(A) oral or written communication by the owner or someone with apparent authority to act for the owner;

(B) fencing or other enclosure obviously designed to exclude intruders or to contain livestock; or

(C) a sign or signs posted on the property or at the entrance to the building, reasonably likely to come to the attention of intruders, indicating that entry is forbidden.

(3) "Shelter center" has the meaning assigned by Section 51.002(1), Human Resources Code.

(c) It is a defense to prosecution under this section that the actor at the time of the offense was a fire fighter or emergency medical services personnel, as that term is defined by Section 773.003, Health and Safety Code, acting in the lawful discharge of an official duty under exigent circumstances.

(d) An offense under this section is a Class C [B] misdemeanor unless it is committed in a habitation or a shelter center or unless the actor carries a deadly weapon on or about his person during the commission of the offense, in which event it is a Class A misdemeanor.

#### CHAPTER 31. THEFT

Sec. 31.01. DEFINITIONS. In this chapter:

(1) ~~["Coercion" means a threat, however communicated:~~

~~[(A) to commit an offense;~~

~~[(B) to inflict bodily injury in the future on the person threatened or another;~~

~~[(C) to accuse a person of any offense; or~~

~~[(D) to expose a person to hatred, contempt, or ridicule;~~

~~[(E) to harm the credit or business reputation of any person;~~

~~or~~

~~[(F) to take or withhold action as a public servant, or to cause a public servant to take or withhold action.~~

[(2)] "Deception" means:

(A) creating or confirming by words or conduct a false impression of law or fact that is likely to affect the judgment of another in the transaction, and that the actor does not believe to be true;

(B) failing to correct a false impression of law or fact that is likely to affect the judgment of another in the transaction, that the actor previously created or confirmed by words or conduct, and that the actor does not now believe to be true;

(C) preventing another from acquiring information likely to affect his judgment in the transaction;

(D) selling or otherwise transferring or encumbering property without disclosing a lien, security interest, adverse claim, or other legal impediment to the enjoyment of the property, whether the lien, security interest, claim, or impediment is or is not valid, or is or is not a matter of official record; or

(E) promising performance that is likely to affect the judgment of another in the transaction and that the actor does not intend to perform or knows will not be performed, except that failure to perform the promise in issue without other evidence of intent or knowledge is not sufficient proof that the actor did not intend to perform or knew the promise would not be performed.

(2) ~~(3)~~ "Deprive" means:

(A) to withhold property from the owner permanently or for so extended a period of time that a major portion of the value or enjoyment of the property is lost to the owner;

(B) to restore property only upon payment of reward or other compensation; or

(C) to dispose of property in a manner that makes recovery of the property by the owner unlikely.

(3) ~~(4)~~ "Effective consent" includes consent by a person legally authorized to act for the owner. Consent is not effective if:

(A) induced by deception or coercion;

(B) given by a person the actor knows is not legally authorized to act for the owner;

(C) given by a person who by reason of youth, mental disease or defect, or intoxication is known by the actor to be unable to make reasonable property dispositions; or

(D) given solely to detect the commission of an offense.

(4) ~~(5)~~ "Appropriate" means:

(A) to bring about a transfer or purported transfer of title to or other nonpossessory interest in property, whether to the actor or another; or

(B) to acquire or otherwise exercise control over property other than real property.

(5) ~~(6)~~ "Property" means:

(A) real property;

(B) tangible or intangible personal property including anything severed from land; or

(C) a document, including money, that represents or embodies anything of value.

(6) ~~(7)~~ "Service" includes:

(A) labor and professional service;

(B) telecommunication, cable television, subscription television, public utility, or ~~and~~ transportation service;

(C) lodging, restaurant service, and entertainment; and

(D) the supply of a motor vehicle or other property for use.

(7) ~~(8)~~ "Steal" means to acquire property or service by theft.

(8) ~~(9)~~ "Certificate of title" has the meaning assigned by Section 24, Certificate of Title Act (Article 6687-1, Vernon's Texas Civil Statutes).

(9) ~~(10)~~ "Used or secondhand motor vehicle" means a used car, as that term is defined by Section 10, Certificate of Title Act (Article 6687-1, Vernon's Texas Civil Statutes).

(10) "Cable television service" means a service provided by or through a facility of a cable television system or a closed circuit coaxial cable communication system or a microwave or similar transmission service used in connection with a cable television system.

(11) "Subscription television service" means a service whereby television broadcast programs intended to be received in an intelligible form by members of the public only for a fee or charge are transmitted pursuant to the grant of subscription television authority by the Federal Communications Commission. The term does not include cable television service or community antenna television service.

Sec. 31.02. CONSOLIDATION OF THEFT OFFENSES. Theft as defined in Section 31.03 ~~[of this code]~~ constitutes a single offense superseding the separate offenses previously known as theft, theft by false pretext, conversion by a bailee, theft from the person, shoplifting, acquisition of property by threat, swindling, swindling by worthless check, embezzlement, extortion, receiving or concealing embezzled property, and receiving or concealing stolen property.

Sec. 31.03. THEFT. (a) A person commits an offense if he unlawfully appropriates property with intent to deprive the owner of property.

(b) Appropriation of property is unlawful if:

(1) it is without the owner's effective consent;

(2) the property is stolen and the actor appropriates the property knowing it was stolen by another; or

(3) property in the custody of any law enforcement agency was explicitly represented by any law enforcement agent to the actor as being stolen and the actor appropriates the property believing it was stolen by another.

(c) For purposes of Subsection (b) ~~[of this section]~~:

(1) evidence that the actor has previously participated in recent transactions other than, but similar to, that which the prosecution is based is admissible for the purpose of showing knowledge or intent and the issues of knowledge or intent are raised by the actor's plea of not guilty;

(2) the testimony of an accomplice shall be corroborated by proof that tends to connect the actor to the crime, but the actor's knowledge or intent may be established by the uncorroborated testimony of the accomplice;

(3) an actor engaged in the business of buying and selling used or secondhand personal property, or lending money on the security of personal property deposited with him, is presumed to know upon receipt by the actor of stolen property (other than a motor vehicle subject to Article 6687-1, Vernon's Texas Civil Statutes) that the property has been previously stolen from another if the actor pays for or loans against the property \$25 or more (or consideration of equivalent value) and the actor knowingly or recklessly:

(A) fails to record the name, address, and physical description or identification number of the seller or pledgor;

(B) fails to record a complete description of the property, including the serial number, if reasonably available, or other identifying characteristics; or

(C) fails to obtain a signed warranty from the seller or pledgor that the seller or pledgor has the right to possess the property. It is the express intent of this provision that the presumption arises unless the actor complies with each of the numbered requirements;

(4) for the purposes of Subdivision (3)(A) ~~[of this subsection]~~, "identification number" means driver's license number, military identification number, identification certificate, or other official number capable of identifying an individual;

(5) stolen property does not lose its character as stolen when recovered by any law enforcement agency;

(6) an actor engaged in the business of obtaining abandoned or wrecked motor vehicles or parts of an abandoned or wrecked motor vehicle for resale, disposal, scrap, repair, rebuilding, demolition, or other form of salvage is presumed to know on receipt by the actor of stolen property that the property has been previously stolen from another if the actor knowingly or recklessly:

(A) fails to maintain an accurate and legible inventory of each ~~[major]~~ motor vehicle component part purchased by or delivered to the actor, including the date of purchase or delivery, the name, age, address, sex, and driver's license number of the seller or person making the delivery, the license plate number of the motor vehicle in which the part was delivered, a complete description of the part, and the vehicle identification number of the motor vehicle from which the part was removed, or in lieu of maintaining an inventory, fails to record the name and certificate of inventory number of the person who dismantled the motor vehicle from which the part was obtained;

(B) fails on receipt of a motor vehicle to obtain a certificate of authority, sales receipt, or transfer document as required by Article V, Section 1, Chapter 741, Acts of the 67th Legislature, Regular Session, 1981 (Article 4477-9a, Vernon's Texas Civil Statutes), or a certificate of title showing that the motor vehicle is not subject to a lien or that all recorded liens on the motor vehicle have been released; or

(C) fails on receipt of a motor vehicle to immediately remove an unexpired license plate from the motor vehicle, to keep the plate in a secure and locked place, or to maintain an inventory, on forms provided by the Texas ~~[State]~~ Department of ~~[Highways and Public]~~ Transportation, of license plates kept under this paragraph, including for each plate or set of plates the license plate number and the make, motor number, and vehicle identification number of the motor vehicle from which the plate was removed; and

(7) an actor who purchases or receives a used or secondhand motor vehicle is presumed to know on receipt by the actor of the motor vehicle that the motor vehicle has been previously stolen from another if the actor knowingly or recklessly:

(A) fails to report to the ~~Texas~~ ~~[State]~~ Department of ~~[Highways and Public]~~ Transportation the failure of the person who sold or delivered the motor vehicle to the actor to deliver to the actor a properly executed certificate of title to the motor vehicle at the time the motor vehicle was delivered; or

(B) fails to file with the county tax assessor-collector of the county in which the actor received the motor vehicle, not later than the 20th day after the date the actor received the motor vehicle, the registration license receipt and certificate of title or evidence of title delivered to the actor in accordance with Section 2, Chapter 364, Acts of the 50th Legislature, Regular Session, 1947 (Article 6687-6, Vernon's Texas Civil Statutes), at the time the motor vehicle was delivered[; and

~~[(8) an actor who possesses a shopping cart, laundry cart, or container that has a name or mark and is not on the premises of the owner or an adjacent parking area is presumed to have appropriated property without the owner's effective consent].~~

(d) It is not a defense to prosecution under this section that:

(1) the offense occurred as a result of a deception or strategy on the part of a law enforcement agency, including the use of an undercover operative or peace officer;

(2) the actor was provided by a law enforcement agency with a facility in which to commit the offense or an opportunity to engage in conduct constituting the offense; or

(3) the actor was solicited to commit the offense by a peace officer, and the solicitation was of a type that would encourage a person predisposed to commit the offense to actually commit the offense, but would not encourage a person not predisposed to commit the offense to actually commit the offense.

(e) Except as provided by Subsection (f) ~~[of this section]~~, an offense under this section is:

(1) a Class C misdemeanor if the value of the property stolen is less than \$20;

(2) a Class B misdemeanor if[:

~~[(A)] the value of the property stolen is \$20 or more but less than \$500~~ ~~[\$200; or~~

~~[(B) the value of the property stolen is less than \$20 and the defendant has previously been convicted of any grade of theft];~~

(3) a Class A misdemeanor if[:

~~[(A)] the value of the property stolen is \$500~~ ~~[\$200] or more but less than \$1,500~~ ~~[\$750; or~~

~~[(B) the property stolen is one firearm, as defined by Section 46.01 of this code, and is valued at less than \$400];~~

(4) a state jail felony ~~[of the third degree]~~ if:

(A) the value of the property stolen is \$1,500 ~~[\$750]~~ or more but less than \$20,000[; ~~or the property is one or more head of cattle, horses, sheep, swine, or goats or any part thereof under the value of \$20,000];~~

(B) regardless of value, the property is stolen from the person of another or from a human corpse or grave;

(C) the property stolen is a ~~a~~ [one] firearm, as defined by Section 46.01 ~~[of this code, and is valued at more than \$400]; or~~

(D) ~~[the property stolen is two or more firearms, as defined by Section 46.01 of this code; or~~

~~[(E)]~~ the value of the property stolen is less than \$1,500 ~~[\$750]~~ and the defendant has been previously convicted two or more times of any grade of theft;

(5) a felony of the third ~~[second]~~ degree if[:

~~[(A) the value of the property stolen is less than \$100,000 and the property is:~~

~~[(i) combustible hydrocarbon natural or synthetic natural gas, or crude petroleum oil;~~

~~[(ii) equipment designed for use in exploration for or production of natural gas or crude petroleum oil; or~~

~~[(iii) equipment designed for use in remedial or diagnostic operations on gas or crude petroleum oil wells;~~

~~[(B)]~~ the value of the property stolen is \$20,000 or more but less than \$100,000; ~~or~~

~~[(C) the value of the property is less than \$100,000 and the property was unlawfully appropriated or attempted to be unlawfully appropriated by threat to commit a felony offense against the person or property of the person threatened or another or to withhold information about the location or purported location of a bomb, poison, or other harmful object that threatens to harm the person or property of the person threatened or another person; or]~~

(6) a felony of the second ~~[first]~~ degree if[:

~~[(A)]~~ the value of the property stolen is \$100,000 or more but less than \$200,000; ~~or~~

~~[(7) a felony of the first degree if the value of the property stolen is \$200,000 or more [(B) the value of the property is \$100,000 or more and the property was unlawfully appropriated or attempted to be unlawfully appropriated in the manner described by Subdivision (5)(C) of this subsection].~~

(f) An offense described for purposes of punishment by Subsections ~~[Subsection] (e)(1)-(6) [of this section]~~ is increased to the next higher category of offense if it is shown on the trial of the offense that:

(1) the actor was a public servant at the time of the offense; and

(2) the property appropriated came into the actor's custody, possession, or control by virtue of his status as a public servant.

~~[(g) For the purposes of Subsection (c)(8) of this section, "shopping cart," "laundry cart," "container," and "name or mark" have the respective meanings assigned by Section 17.31, Business & Commerce Code.]~~

Sec. 31.04. THEFT OF SERVICE. (a) A person commits theft of service if, with intent to avoid payment for service that he knows is provided only for compensation:

(1) he intentionally or knowingly secures performance of the service by deception, threat, or false token;

(2) having control over the disposition of services of another to which he is not entitled, he intentionally or knowingly diverts the other's



services to his own benefit or to the benefit of another not entitled to them; or

(3) having control of personal property under a written rental agreement, he holds the property beyond the expiration of the rental period without the effective consent of the owner of the property, thereby depriving the owner of the property of its use in further rentals.

(b) For purposes of this section, intent to avoid payment is presumed if:

(1) the actor absconded without paying for the service in circumstances where payment is ordinarily made immediately upon rendering of the service, as in hotels, restaurants, and comparable establishments;

(2) the actor failed to return the property held under a rental agreement within 10 days after receiving notice demanding return; or

(3) the actor returns property held under a rental agreement after the expiration of the rental agreement and fails to pay the applicable rental charge for the property within 10 days after the date on which the actor received notice demanding payment.

(c) For purposes of Subsection (b)(2) ~~[of this section]~~, notice shall be notice in writing, sent by registered or certified mail with return receipt requested or by telegram with report of delivery requested, and addressed to the actor at his address shown on the rental agreement.

(d) If written notice is given in accordance with Subsection (c) ~~[of this section]~~, it is presumed that the notice was received no later than five days after it was sent.

(e) An offense under this section is:

(1) a Class C misdemeanor if the value of the service stolen is less than \$20;

(2) a Class B misdemeanor if the value of the service stolen is \$20 or more but less than \$500 ~~[\$200]~~;

(3) a Class A misdemeanor if the value of the service stolen is \$500 ~~[\$200]~~ or more but less than \$1,500 ~~[\$750]~~;

(4) a state jail felony ~~[of the third degree]~~ if the value of the service stolen is \$1,500 ~~[\$750]~~ or more but less than \$20,000;

(5) a felony of the third ~~[second]~~ degree if the value of the service stolen is \$20,000 or more but less than \$100,000;

(6) a felony of the second degree if the value of the service stolen is \$100,000 or more but less than \$200,000; or

(7) a felony of the first degree if the value of the service stolen is \$200,000 or more.

Sec. 31.05. THEFT OF TRADE SECRETS. (a) For purposes of this section:

(1) "Article" means any object, material, device, or substance or any copy thereof, including a writing, recording, drawing, sample, specimen, prototype, model, photograph, microorganism, blueprint, or map.

(2) "Copy" means a facsimile, replica, photograph, or other reproduction of an article or a note, drawing, or sketch made of or from an article.

(3) "Representing" means describing, depicting, containing, constituting, reflecting, or recording.

(4) "Trade secret" means the whole or any part of any scientific or technical information, design, process, procedure, formula, or improvement that has value and that the owner has taken measures to prevent from becoming available to persons other than those selected by the owner to have access for limited purposes.

(b) A person commits an offense if, without the owner's effective consent, he knowingly:

- (1) steals a trade secret;
- (2) makes a copy of an article representing a trade secret; or
- (3) communicates or transmits a trade secret.

(c) An offense under this section is a felony of the third degree.

Sec. 31.06. PRESUMPTION FOR THEFT BY CHECK. (a) If the actor obtained property or secured performance of service by issuing or passing a check or similar sight order for the payment of money, when the issuer did not have sufficient funds in or on deposit with the bank or other drawee for the payment in full of the check or order as well as all other checks or orders then outstanding, his intent to deprive the owner of property under Section 31.03 ~~[of this code]~~ (Theft) or to avoid payment for service under Section 31.04 ~~[of this code]~~ (Theft of Service) is presumed (except in the case of a postdated check or order) if:

(1) he had no account with the bank or other drawee at the time he issued the check or order; or

(2) payment was refused by the bank or other drawee for lack of funds or insufficient funds, on presentation within 30 days after issue, and the issuer failed to pay the holder in full within 10 days after receiving notice of that refusal.

(b) For purposes of Subsection (a)(2) ~~[of this section]~~, notice may be actual notice or notice in writing, sent by registered or certified mail with return receipt requested or by telegram with report of delivery requested, and addressed to the issuer at his address shown on:

- (1) the check or order;
- (2) the records of the bank or other drawee; or
- (3) the records of the person to whom the check or order has been issued or passed.

(c) If written notice is given in accordance with Subsection (b) ~~[of this section]~~, it is presumed that the notice was received no later than five days after it was sent.

(d) Nothing in this section prevents the prosecution from establishing the requisite intent by direct evidence.

(e) Partial restitution does not preclude the presumption of the requisite intent under this section.

Sec. 31.07. UNAUTHORIZED USE OF A VEHICLE. (a) A person commits an offense if he intentionally or knowingly operates another's boat, airplane, or motor-propelled vehicle without the effective consent of the owner.

(b) An offense under this section is a state jail felony ~~[of the third degree]~~.

Sec. 31.08. VALUE. (a) Subject to the additional criteria of Subsections (b) and (c) ~~[of this section]~~, value under this chapter is:

(1) the fair market value of the property or service at the time and place of the offense; or

(2) if the fair market value of the property cannot be ascertained, the cost of replacing the property within a reasonable time after the theft.

(b) The value of documents, other than those having a readily ascertainable market value, is:

(1) the amount due and collectible at maturity less that part which has been satisfied, if the document constitutes evidence of a debt; or

(2) the greatest amount of economic loss that the owner might reasonably suffer by virtue of loss of the document, if the document is other than evidence of a debt.

(c) ~~Except as otherwise provided by this subsection, if [H] property or service has value that cannot be reasonably ascertained by the criteria set forth in Subsections (a) and (b) [of this section], the property or service is deemed to have a value of \$500 or more [than \$200] but less than \$1,500. If the service is cable television service or subscription television service, the service is deemed to have a value of \$50 or more but less than \$500, unless proof exists of a greater value [ \$750].~~

(d) If the actor proves by a preponderance of the evidence that he gave consideration for or had a legal interest in the property or service stolen, the amount of the consideration or the value of the interest so proven shall be deducted from the value of the property or service ascertained under Subsection (a), (b), or (c) ~~[of this section]~~ to determine value for purposes of this chapter.

Sec. 31.09. AGGREGATION OF AMOUNTS INVOLVED IN THEFT. When amounts are obtained in violation of this chapter pursuant to one scheme or continuing course of conduct, whether from the same or several sources, the conduct may be considered as one offense and the amounts aggregated in determining the grade of the offense.

Sec. 31.10. ACTOR'S INTEREST IN PROPERTY. It is no defense to prosecution under this chapter that the actor has an interest in the property or service stolen if another person has the right of exclusive possession of the property.

Sec. 31.11. TAMPERING WITH IDENTIFICATION NUMBERS. (a) A person commits an offense if the person:

(1) knowingly or intentionally removes, alters, or obliterates the serial number or other permanent identification marking on tangible personal property; or

(2) possesses, sells, or offers for sale tangible personal property and:

(A) the actor knows that the serial number or other permanent identification marking has been removed, altered, or obliterated; or

(B) a reasonable person in the position of the actor would have known that the serial number or other permanent identification marking has been removed, altered, or obliterated.

(b) It is an affirmative defense to prosecution under this section that the person was:

(1) the owner or acting with the effective consent of the owner of the property involved ~~[and the item of property is not property listed in Subsection (c) of this section];~~

(2) a peace officer acting in the actual discharge of official duties; or

(3) acting with respect to a number assigned to a vehicle by the Texas [State] Department of [Highways and Public] Transportation and the person was:

(A) in the actual discharge of official duties as an employee or agent of the department; or

(B) in full compliance with the rules of the department as an applicant for an assigned number approved by the department.

(c) Property involved in a violation of this section may be treated as stolen for purposes of custody and disposition of the property.

(d) ~~An [Except as provided by Subsection (c) of this section, an] offense under this section is a Class A misdemeanor.~~

(e) ~~[An offense under this section is a felony of the third degree if the property involved is:~~

~~[(1) equipment designed for exploration or production of natural gas or crude oil;~~

~~[(2) equipment designed for remedial or diagnostic operations on gas or crude oil wells;~~

~~[(3) a vehicle or part of a vehicle;~~

~~[(4) a tractor, farm implement, unit of special mobile equipment, or a unit of off-road construction equipment not subject to the Certificate of Title Act (Article 6687-1, Vernon's Texas Civil Statutes);~~

~~[(5) an aircraft, boat, or part of an aircraft or boat; or~~

~~[(6) a firearm or part of a firearm.~~

~~[(f)] In this section, "vehicle" has the meaning given by Section 2, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes).~~

~~[Sec. 31.12. UNAUTHORIZED USE OF TELEVISION DECODING AND INTERCEPTION DEVICE OR CABLE DESCRAMBLING, DECODING, OR INTERCEPTION DEVICE. (a) A person commits an offense if, with the intent to intercept and decode a transmission by a subscription television service without the authorization of the provider of the service, the person intentionally or knowingly attaches to, causes to be attached to, or incorporates in a television set, video tape recorder, or other equipment designed to receive a television transmission a device that intercepts and decodes the transmission.~~

~~[(b) A person commits an offense if, with the intent to intercept, descramble, or decode a cable television service and without the authorization of the provider of the service, the person intentionally or knowingly:~~

~~[(1) physically, electrically, electronically, acoustically, or inductively makes or maintains an unauthorized cable connection or otherwise intercepts cable television service;~~

~~[(2) attaches to, causes to be attached to, maintains an attachment to, or incorporates in a television set, video tape recorder, other equipment designed to receive a television transmission, or equipment of a cable television company a device that intercepts, descrambles, or decodes the service; or~~

~~[(3) tampers with, changes, or modifies the equipment of a cable television company.~~

~~[(c) In this section:~~

~~[(1) "Cable television service" means a service provided by or through a facility of a cable television system, closed circuit coaxial cable communication system, or microwave or similar transmission service used in connection with a cable television system.~~

~~[(2) "Device" means a device other than a nondecoding or nondescrambling channel frequency converter or television receiver type accepted by the Federal Communications Commission.~~

~~[(3) "Subscription television service" means a service whereby television broadcast programs intended to be received in an intelligible form by members of the public only for a fee or charge are transmitted pursuant to the grant of subscription television authority by the Federal Communications Commission. The term shall not include cable television service or community antenna television service.~~

~~[(d) If an unauthorized device designed to intercept, descramble, or decode a subscription television transmission or if an unauthorized device designed to intercept, descramble, or decode a cable television service is present on the premises or property occupied and used by a person, it is presumed that the person intentionally or knowingly used the device to intercept, descramble, or decode a transmission or a service. If an unauthorized cable connection is present on the premises or property occupied and used by a person, it is presumed that the person intentionally or knowingly used the connection to intercept cable television service. If equipment of a cable television company that has been tampered with, changed, or modified is present on the premises or property occupied and used by a person, it is presumed that the person intentionally or knowingly used the equipment to intercept, descramble, or decode a cable television service.~~

~~[(e) The presumptions created by Subsection (d) of this section do not apply if the person accused shows by a preponderance of the evidence that the presence of the unauthorized device or connection, or the tampering, change, or modification of the equipment of the cable television company, may be attributed to the conduct of another.~~

~~[(f) The presumptions created by Subsection (d) of this section do not apply to a telecommunications company that provides local or long distance communications services and uses equipment described by that subsection in the normal course of its business.~~

~~[(g) This section does not prohibit the manufacture, distribution, sale, or use of satellite receiving antennas that are otherwise permitted by state or federal law.~~

~~[(h) An offense under this section is a Class B misdemeanor unless the actor committed the offense for remuneration, in which event it is a Class A misdemeanor.~~

~~[Sec. 31.13. MANUFACTURE, SALE, OR DISTRIBUTION OF TELEVISION DECODING AND INTERCEPTION DEVICE OR CABLE DESCRAMBLING, DECODING, OR INTERCEPTION DEVICE. (a) A person commits an offense if the person for remuneration intentionally or knowingly manufactures, distributes, or sells, with an intent to aid an offense under Section 31.12 of this code, a device or a plan or part for a device that intercepts and decodes a transmission by a subscription television service or that intercepts, descrambles, or decodes a cable television service.~~

~~[(b) In this section, "cable television service," "device," and "subscription television service" have the meanings assigned by Section 31.12 of this code.~~

~~[(c) This section does not prohibit the manufacture, distribution, sale, or use of satellite receiving antennas that are otherwise permitted by state or federal law.~~

~~[(d) An offense under this section is a Class A misdemeanor.]~~

## CHAPTER 32. FRAUD

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 32.01. DEFINITIONS. In this chapter:

(1) "Financial institution" means a bank, trust company, insurance company, credit union, building and loan association, savings and loan association, investment trust, investment company, or any other organization held out to the public as a place for deposit of funds or medium of savings or collective investment.

(2) "Property" means:

(A) real property;  
(B) tangible or intangible personal property including anything severed from land; or  
(C) a document, including money, that represents or embodies anything of value.

(3) "Service" includes:

(A) labor and professional service;  
(B) telecommunication, public utility, and transportation service;  
(C) lodging, restaurant service, and entertainment; and  
(D) the supply of a motor vehicle or other property for use.

(4) "Steal" means to acquire property or service by theft.

Sec. 32.02. VALUE. (a) Subject to the additional criteria of Subsections (b) and (c) ~~[of this section]~~, value under this chapter is:

(1) the fair market value of the property or service at the time and place of the offense; or

(2) if the fair market value of the property cannot be ascertained, the cost of replacing the property within a reasonable time after the offense.

(b) The value of documents, other than those having a readily ascertainable market value, is:

(1) the amount due and collectible at maturity less any part that has been satisfied, if the document constitutes evidence of a debt; or

(2) the greatest amount of economic loss that the owner might reasonably suffer by virtue of loss of the document, if the document is other than evidence of a debt.

(c) If property or service has value that cannot be reasonably ascertained by the criteria set forth in Subsections (a) and (b) ~~[of this section]~~, the property or service is deemed to have a value of \$500 or more ~~[than \$20]~~ but less than \$1,500 ~~[\$200]~~.

(d) If the actor proves by a preponderance of the evidence that he gave consideration for or had a legal interest in the property or service stolen, the amount of the consideration or the value of the interest so proven shall be deducted from the value of the property or service ascertained under Subsection (a), (b), or (c) ~~[of this section]~~ to determine value for purposes of this chapter.

Sec. 32.03. AGGREGATION OF AMOUNTS INVOLVED IN FRAUD. When amounts are obtained in violation of this chapter pursuant to one scheme or continuing course of conduct, whether from the same or several sources, the conduct may be considered as one offense and the amounts aggregated in determining the grade of offense.

[Sections 32.04-32.20 reserved for expansion]

#### SUBCHAPTER B. FORGERY

Sec. 32.21. FORGERY. (a) For purposes of this section:

(1) "Forge" means:

(A) to alter, make, complete, execute, or authenticate any writing so that it purports:

(i) to be the act of another who did not authorize that act;

(ii) to have been executed at a time or place or in a numbered sequence other than was in fact the case; or

(iii) to be a copy of an original when no such original existed;

(B) to issue, transfer, register the transfer of, pass, publish, or otherwise utter a writing that is forged within the meaning of Paragraph (A) ~~[of this subdivision]~~; or

(C) to possess a writing that is forged within the meaning of Paragraph (A) with intent to utter it in a manner specified in Paragraph (B) ~~[of this subdivision]~~.

(2) "Writing" includes:

(A) printing or any other method of recording information;

(B) money, coins, tokens, stamps, seals, credit cards, badges, and trademarks; and

(C) symbols of value, right, privilege, or identification.

(b) A person commits an offense if he forges a writing with intent to defraud or harm another.

(c) Except as provided in Subsections (d) and (e) ~~[of this section]~~ an offense under this section is a Class A misdemeanor.

(d) An offense under this section is a state jail felony ~~[of the third degree]~~ if the writing is or purports to be a will, codicil, deed, deed of trust, mortgage, security instrument, security agreement, credit card, check or similar sight order for payment of money, contract, release, or other commercial instrument.

(e) An offense under this section is a felony of the third ~~[second]~~ degree if the writing is or purports to be:

(1) part of an issue of money, securities, postage or revenue stamps;

(2) a government record listed in Section 37.01(1)(C) ~~[of this code]~~; or

(3) other instruments issued by a state or national government or by a subdivision of either, or part of an issue of stock, bonds, or other instruments representing interests in or claims against another person.

(f) A person is presumed to intend to defraud or harm another if the person acts with respect to two or more writings of the same type and if each writing is a government record listed in Section 37.01(1)(C) ~~[of this code]~~.

Sec. 32.22. CRIMINAL SIMULATION. (a) A person commits an offense if, with intent to defraud or harm another:

(1) he makes or alters an object, in whole or in part, so that it appears to have value because of age, antiquity, rarity, source, or authorship that it does not have;

(2) ~~[he sells, passes, or otherwise utters an object so made or altered;~~

~~[(3)]~~ he possesses an object so made or altered, with intent to sell, pass, or otherwise utter it; or

~~[(3)]~~ ~~[(4)]~~ he authenticates or certifies an object so made or altered as genuine or as different from what it is.

(b) An offense under this section is a Class A misdemeanor.

[Sections 32.23-32.30 reserved for expansion]

#### SUBCHAPTER C. CREDIT

Sec. 32.31. CREDIT CARD OR DEBIT CARD ABUSE. (a) For purposes of this section:

(1) "Cardholder" means the person named on the face of a credit card or debit card to whom or for whose benefit the ~~[credit]~~ card is issued.

(2) "Credit card" means an identification card, plate, coupon, book, number, or any other device authorizing a designated person or bearer to obtain property or services on credit. The term ~~[(t)]~~ includes the number or description of the device if the device itself is not produced at the time of ordering or obtaining the property or service.

(3) "Expired credit card" means a credit card bearing an expiration date after that date has passed.

(4) "Debit card" means an identification card, plate, coupon, book, number, or any other device authorizing a designated person or bearer to communicate a request to an unmanned teller machine or a customer convenience terminal. The term includes the number or description of the device if the device itself is not produced at the time of ordering or obtaining the benefit.

(5) "Expired debit card" means a debit card bearing as its expiration date a date that has passed.

(6) "Unmanned teller machine" means a machine, other than a telephone, capable of being operated by a customer, by which a customer may communicate to a financial institution a request to withdraw a benefit



for himself or for another directly from the customer's account or from the customer's account under a line of credit previously authorized by the institution for the customer.

(7) "Customer convenience terminal" means an unmanned teller machine the use of which does not involve personnel of a financial institution.

(b) A person commits an offense if:

(1) with intent to obtain a benefit ~~[property or service]~~ fraudulently, he presents or uses a credit card or debit card with knowledge that:

(A) the card, whether or not expired, has not been issued to him and is not used with the effective consent of the cardholder; or

(B) the card has expired or has been revoked or cancelled;

(2) with intent to obtain a benefit ~~[property or service]~~, he uses a fictitious credit card or debit card or the pretended number or description of a fictitious ~~[credit]~~ card;

(3) he receives a benefit ~~[property or service]~~ that he knows has been obtained in violation of this section;

(4) he steals a credit card or debit card or, with knowledge that it has been stolen, receives a credit card or debit card with intent to use it, to sell it, or to transfer it to a person other than the issuer or the cardholder;

(5) he buys a credit card or debit card from a person who he knows is not the issuer;

(6) not being the issuer, he sells a credit card or debit card;

(7) he uses or induces the cardholder to use the cardholder's credit card to obtain property or service for the actor's benefit for which the cardholder is financially unable to pay;

(8) not being the cardholder, and without the effective consent of the cardholder, he signs or writes his name or the name of another on a credit card or debit card with intent to use it;

(9) he possesses two or more incomplete credit cards or debit cards that have not been issued to him with intent to complete them without the effective consent of the issuer. For purposes of this subdivision, a ~~[credit]~~ card is incomplete if part of the matter that an issuer requires to appear on the ~~[credit]~~ card before it can be used, ~~[(f)]~~ other than the signature of the cardholder, ~~[(f)]~~ has not yet been stamped, embossed, imprinted, or written on it;

(10) being authorized by an issuer to furnish goods or services on presentation of a credit card, he, with intent to defraud the issuer or the cardholder, furnishes goods or services on presentation of a credit card obtained or retained in violation of this section or a credit card that is forged, expired, or revoked; or

(11) being authorized by an issuer to furnish goods or services on presentation of a credit card, he, with intent to defraud the issuer or a cardholder, fails to furnish goods or services that he represents in writing to the issuer that he has furnished.

(c) It is presumed that a person who used a revoked, cancelled, or expired credit card or debit card had knowledge that the card had been

revoked, cancelled, or expired if he had received notice of revocation, cancellation, or expiration from the issuer. For purposes of this section, notice may be either notice given orally in person or by telephone, or in writing by mail or by telegram. If written notice was sent by registered or certified mail with return receipt requested, or by telegram with report of delivery requested, addressed to the cardholder at the last address shown by the records of the issuer, it is presumed that the notice was received by the cardholder no later than five days after sent.

(d) An offense under this section is a state jail felony ~~[of the third degree]~~.

Sec. 32.32. FALSE STATEMENT TO OBTAIN PROPERTY OR CREDIT. (a) For purposes of this section, "credit" includes:

- (1) a loan of money;
- (2) furnishing property or service on credit;
- (3) extending the due date of an obligation;
- (4) comaking, endorsing, or guaranteeing a note or other instrument for obtaining credit;
- (5) a line or letter of credit; and
- (6) a credit card, as defined in Section 32.31 ~~[of this code]~~ (Credit Card Abuse).

(b) A person commits an offense if he intentionally or knowingly makes a materially false or misleading written statement to obtain property or credit for himself or another.

(c) An offense under this section is a Class A misdemeanor.

Sec. 32.33. HINDERING SECURED CREDITORS. (a) For purposes of this section:

(1) "Remove" means transport, without the effective consent of the secured party, from the state in which the property was located when the security interest or lien attached.

(2) "Security interest" means an interest in personal property or fixtures that secures payment or performance of an obligation.

(b) A person who has signed a security agreement creating a security interest in property or a mortgage or deed of trust creating a lien on property commits an offense if, with intent to hinder enforcement of that interest or lien, he destroys, removes, conceals, encumbers, or otherwise harms or reduces the value of the property.

(c) For purposes of this section, a person is presumed to have intended to hinder enforcement of the security interest or lien if, when any part of the debt secured by the security interest or lien was due, he failed:

- (1) to pay the part then due; and
- (2) if the secured party had made demand, to deliver possession of the secured property to the secured party.

(d) ~~An [Except as provided in Subsections (c) and (f) of this section, an] offense under Subsection (b) [this section] is a:~~

(1) Class C misdemeanor if the value of the property destroyed, removed, concealed, encumbered, or otherwise harmed or reduced in value is less than \$50;

(2) Class B misdemeanor if the value of the property destroyed, removed, concealed, encumbered, or otherwise harmed or reduced in value is \$50 or more but less than \$500;

(3) Class A misdemeanor if the value of the property destroyed, removed, concealed, encumbered, or otherwise harmed or reduced in value is \$500 or more but less than \$1,500;

(4) state jail felony if the value of the property destroyed, removed, concealed, encumbered, or otherwise harmed or reduced in value is \$1,500 or more but less than \$20,000;

(5) felony of the third degree if the value of the property destroyed, removed, concealed, encumbered, or otherwise harmed or reduced in value is \$20,000 or more but less than \$100,000;

(6) felony of the second degree if the value of the property destroyed, removed, concealed, encumbered, or otherwise harmed or reduced in value is \$100,000 or more but less than \$200,000; or

(7) felony of the first degree if the value of the property destroyed, removed, concealed, encumbered, or otherwise harmed or reduced in value is \$200,000 or more [Class A misdemeanor].

(e) [If the actor removes the property, the offense is a felony of the third degree.]

[(f)] A person who is a debtor under a security agreement, and who does not have a right to sell or dispose of the secured property or is required to account to the secured party for the proceeds of a permitted sale or disposition, commits an offense if the person sells or otherwise disposes of the secured property, or does not account to the secured party for the proceeds of a sale or other disposition as required, with intent to appropriate (as defined in Chapter 31 [of this code]) the proceeds or value of the secured property. A person is presumed to have intended to appropriate proceeds if the person does not deliver the proceeds to the secured party or account to the secured party for the proceeds before the 11th day after the day that the secured party makes a lawful demand for the proceeds or account. An offense under this subsection is:

(1) a Class C [A] misdemeanor if the proceeds obtained from the sale or other disposition are money or goods having a value of less than \$50 [\$10,000];

(2) a Class B misdemeanor if the proceeds obtained from the sale or other disposition are money or goods having a value of \$50 or more but less than \$500;

(3) a Class A misdemeanor if the proceeds obtained from the sale or other disposition are money or goods having a value of \$500 or more but less than \$1,500;

(4) a state jail felony if the proceeds obtained from the sale or other disposition are money or goods having a value of \$1,500 or more but less than \$20,000;

(5) a felony of the third degree if the proceeds obtained from the sale or other disposition are money or goods having a value of \$20,000 or more but less than \$100,000;

(6) a felony of the second degree if the proceeds obtained from the sale or other disposition are money or goods having a value of \$100,000 or more but less than \$200,000; or

(7) a felony of the first degree if the proceeds obtained from the sale or other disposition are money or goods having a value of \$200,000

~~or more [a felony of the third degree if the proceeds obtained from the sale or other disposition are money or goods having a value of \$10,000 or more].~~

~~[Sec. 32.34. FRAUD IN INSOLVENCY. (a) A person commits an offense if, when proceedings have been or are about to be instituted for the appointment of a trustee, receiver, or other person entitled to administer property for the benefit of creditors, or when any other assignment, composition, or liquidation for the benefit of creditors has been or is about to be made:~~

~~[(1) he destroys, removes, conceals, encumbers, transfers, or otherwise harms or reduces the value of the property with intent to defeat or obstruct the operation of a law relating to administration of property for the benefit of creditors;~~

~~[(2) he intentionally falsifies any writing or record relating to the property or any claim against the debtor; or~~

~~[(3) he intentionally misrepresents or refuses to disclose to a trustee or receiver, or other person entitled to administer property for the benefit of creditors, the existence, amount, or location of the property, or any other information that the actor could legally be required to furnish in relation to the administration.~~

~~[(b) An offense under this section is a Class A misdemeanor.~~

~~[Sec. 32.35. RECEIVING DEPOSIT, PREMIUM, OR INVESTMENT IN FAILING FINANCIAL INSTITUTION. (a) A person directing or participating in the direction of a financial institution commits an offense if he receives or permits the receipt of a deposit, premium payment, or investment in the institution knowing that, due to the financial condition of the institution:~~

~~[(1) it is unable to make payment of the deposit on demand, if it is a deposit ordinarily payable on demand; or~~

~~[(2) it is about to suspend operations or go into receivership.~~

~~[(b) It is a defense to prosecution under this section that:~~

~~[(1) the person making the deposit, premium payment, or investment was adequately informed of the financial condition of the institution; or~~

~~[(2) the accounts of the institution are insured or guaranteed by an agency or instrumentality of the United States government or in accordance with the Texas Credit Union Act (Article 2461-1.01 et seq., Vernon's Texas Civil Statutes).~~

~~[(c) An offense under this section is a Class A misdemeanor.]~~

~~Sec. 32.34 [32.36]. FRAUDULENT TRANSFER OF A MOTOR VEHICLE. (a) In this section:~~

~~(1) "Lease" means the grant of use and possession of a motor vehicle for consideration, whether or not the grant includes an option to buy the vehicle.~~

~~(2) "Motor vehicle" means a device in, on, or by which a person or property is or may be transported or drawn on a highway, except a device used exclusively on stationary rails or tracks.~~

~~(3) "Security interest" means an interest in personal property or fixtures that secures payment or performance of an obligation.~~

(4) "Third party" means a person other than the actor or the owner of the vehicle.

(5) "Transfer" means to transfer possession, whether or not another right is also transferred, by means of a sale, lease, sublease, lease assignment, or other property transfer.

(b) A person commits an offense if the person acquires, accepts possession of, or exercises control over the motor vehicle of another under a written or oral agreement to arrange for the transfer of the vehicle to a third party and:

(1) knowing the vehicle is subject to a security interest, lease, or lien, the person transfers the vehicle to a third party without first obtaining written authorization from the vehicle's secured creditor, lessor, or lienholder;

(2) intending to defraud or harm the vehicle's owner, the person transfers the vehicle to a third party;

(3) intending to defraud or harm the vehicle's owner, the person disposes of the vehicle in a manner other than by transfer to a third party; or

(4) the person does not disclose the location of the vehicle on the request of the vehicle's owner, secured creditor, lessor, or lienholder.

(c) For the purposes of Subsection (b)(2) ~~[of this section]~~, the actor is presumed to have intended to defraud or harm the motor vehicle's owner if the actor does not take reasonable steps to determine whether or not the third party is financially able to pay for the vehicle.

(d) It is a defense to prosecution under Subsection (b)(1) ~~[of this section]~~ that the entire indebtedness secured by or owed under the security interest, lease, or lien is paid or satisfied in full not later than the 30th day after the date that the transfer was made.

(e) It is not a defense to prosecution under Subsection (b)(1) ~~[of this section]~~ that the motor vehicle's owner has violated a contract creating a security interest, lease, or lien in the motor vehicle.

(f) An offense under Subsection (b)(1), (b)(2), or (b)(3) ~~[of this section]~~ is:

(1) a state jail felony ~~[of the third degree]~~ if the value of the motor vehicle is less than \$20,000; or

(2) a felony of the third ~~[second]~~ degree if the value of the motor vehicle is \$20,000 or more.

(g) An offense under Subsection (b)(4) ~~[of this section]~~ is a Class A misdemeanor.

**Sec. 32.35 [32.37]. CREDIT CARD TRANSACTION RECORD LAUNDERING.** (a) In this section:

(1) "Agent" means a person authorized to act on behalf of another and includes an employee.

(2) "Authorized vendor" means a person authorized by a creditor to furnish property, service, or anything else of value upon presentation of a credit card by a cardholder.

(3) "Cardholder" means the person named on the face of a credit card to whom or for whose benefit the credit card is issued, and includes the named person's agents.

(4) "Credit card" means an identification card, plate, coupon, book, number, or any other device authorizing a designated person or bearer to obtain property or services on credit. It includes the number or description on the device if the device itself is not produced at the time of ordering or obtaining the property or service.

(5) "Creditor" means a person licensed under Chapter 3, Subtitle 2, Title 79, Revised Statutes (Article 5069-3.01 et seq., Vernon's Texas Civil Statutes), a bank, savings and loan association, credit union, or other regulated financial institution that lends money or otherwise extends credit to a cardholder through a credit card and that authorizes other persons to honor the credit card.

(b) A person commits an offense if the person is an authorized vendor who, with intent to defraud the creditor or cardholder, presents to a creditor, for payment, a credit card transaction record of a sale that was not made by the authorized vendor or the vendor's agent.

(c) A person commits an offense if, without the creditor's authorization, the person employs, solicits, or otherwise causes an authorized vendor or the vendor's agent to present to a creditor, for payment, a credit card transaction record of a sale that was not made by the authorized vendor or the vendor's agent.

(d) It is presumed that a person is not the agent of an authorized vendor if a fee is paid or offered to be paid by the person to the authorized vendor in connection with the vendor's presentment to a creditor of a credit card transaction record.

(e) An offense under this section is a:

(1) Class C misdemeanor if the amount of the record of a sale is less than \$50;

(2) Class B misdemeanor if the amount of the record of a sale is \$50 or more but less than \$500;

(3) Class A misdemeanor if the amount of the record of a sale is \$500 or more but less than \$1,500;

(4) state jail felony if the amount of the record of a sale is \$1,500 or more but less than \$20,000;

(5) felony of the third degree if the amount of the record of a sale is \$20,000 or more but less than \$100,000;

(6) felony of the second degree if the amount of the record of a sale is \$100,000 or more but less than \$200,000; or

(7) felony of the first degree if the amount of the record of a sale is \$200,000 or more [Class A misdemeanor].

[Sections ~~32.36~~ [32.38]-32.40 reserved for expansion]

#### SUBCHAPTER D. OTHER DECEPTIVE PRACTICES

Sec. 32.41. ISSUANCE OF BAD CHECK. (a) A person commits an offense if he issues or passes a check or similar sight order for the payment of money knowing that the issuer does not have sufficient funds in or on deposit with the bank or other drawee for the payment in full of the check or order as well as all other checks or orders outstanding at the time of issuance.

(b) This section does not prevent the prosecution from establishing the required knowledge by direct evidence; however, for purposes of this

section, the issuer's knowledge of insufficient funds is presumed (except in the case of a postdated check or order) if:

(1) he had no account with the bank or other drawee at the time he issued the check or order; or

(2) payment was refused by the bank or other drawee for lack of funds or insufficient funds on presentation within 30 days after issue and the issuer failed to pay the holder in full within 10 days after receiving notice of that refusal.

(c) Notice for purposes of Subsection (b)(2) ~~[of this section]~~ may be notice in writing, sent by registered or certified mail with return receipt requested or by telegram with report of delivery requested, and addressed to the issuer at his address shown on:

(1) the check or order;

(2) the records of the bank or other drawee; or

(3) the records of the person to whom the check or order has been issued or passed.

(d) If notice is given in accordance with Subsection (c) ~~[of this section]~~, it is presumed that the notice was received no later than five days after it was sent.

(e) A person charged with an offense under this section may make restitution for the bad checks. Restitution shall be made through the prosecutor's office if collection and processing were initiated through that office. In other cases restitution may, with the approval of the court in which the offense is filed, be made through the court.

(f) An offense under this section is a Class C misdemeanor.

(g) An offense under this section is not a lesser included offense of an offense under Section 31.03 or 31.04 ~~[of this code]~~.

Sec. 32.42. DECEPTIVE BUSINESS PRACTICES. (a) For purposes of this section:

(1) "Adulterated" means varying from the standard of composition or quality prescribed by law or set by established commercial usage.

(2) "Business" includes trade and commerce and advertising, selling, and buying service or property.

(3) "Commodity" means any tangible or intangible personal property.

(4) "Contest" includes sweepstake, puzzle, and game of chance.

(5) "Deceptive sales contest" means a sales contest:

(A) that misrepresents the participant's chance of winning a prize;

(B) that fails to disclose to participants on a conspicuously displayed permanent poster (if the contest is conducted by or through a retail outlet) or on each card game piece, entry blank, or other paraphernalia required for participation in the contest (if the contest is not conducted by or through a retail outlet):

(i) the geographical area or number of outlets in which the contest is to be conducted;

(ii) an accurate description of each type of prize;

(iii) the minimum number and minimum amount of

cash prizes; and

(iv) the minimum number of each other type of prize; or

(C) that is manipulated or rigged so that prizes are given to predetermined persons or retail establishments. A sales contest is not deceptive if the total value of prizes to each retail outlet is in a uniform ratio to the number of game pieces distributed to that outlet.

(6) "Mislabeled" means varying from the standard of truth or disclosure in labeling prescribed by law or set by established commercial usage.

(7) "Prize" includes gift, discount, coupon, certificate, gratuity, and any other thing of value awarded in a sales contest.

(8) "Sales contest" means a contest in connection with the sale of a commodity or service by which a person may, as determined by drawing, guessing, matching, or chance, receive a prize and which is not regulated by the rules of a federal regulatory agency.

(9) "Sell" and "sale" include offer for sale, advertise for sale, expose for sale, keep for the purpose of sale, deliver for or after sale, solicit and offer to buy, and every disposition for value.

(b) A person commits an offense if in the course of business he intentionally, knowingly, recklessly, or with criminal negligence commits one or more of the following deceptive business practices:

(1) using, selling, or possessing for use or sale a false weight or measure, or any other device for falsely determining or recording any quality or quantity;

(2) selling less than the represented quantity of a property or service;

(3) taking more than the represented quantity of property or service when as a buyer the actor furnishes the weight or measure;

(4) selling an adulterated or mislabeled commodity;

(5) passing off property or service as that of another;

(6) representing that a commodity is original or new if it is deteriorated, altered, rebuilt, reconditioned, reclaimed, used, or secondhand;

(7) representing that a commodity or service is of a particular style, grade, or model if it is of another;

(8) advertising property or service with intent:

(A) not to sell it as advertised, or

(B) not to supply reasonably expectable public demand, unless the advertising adequately discloses a time or quantity limit;

(9) representing the price of property or service falsely or in a way tending to mislead;

(10) making a materially false or misleading statement of fact concerning the reason for, existence of, or amount of a price or price reduction;

(11) conducting a deceptive sales contest; or

(12) making a materially false or misleading statement:

(A) in an advertisement for the purchase or sale of property or service; or

(B) otherwise in connection with the purchase or sale of property or service.



(c) An offense under Subsections (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), and (b)(6) ~~[of this section]~~ is:

(1) a Class C misdemeanor if the actor commits an offense with criminal negligence and if he has not previously been convicted of a deceptive business practice; or

(2) a Class A misdemeanor if the actor commits an offense intentionally, knowingly, recklessly or if he has been previously convicted of a Class B or C misdemeanor under this section.

(d) An offense under Subsections (b)(7), (b)(8), (b)(9), (b)(10), (b)(11), and (b)(12) is a Class A misdemeanor.

Sec. 32.43. COMMERCIAL BRIBERY. (a) For purposes of this section:

(1) "Beneficiary" means a person for whom a fiduciary is acting.

(2) "Fiduciary" means:

(A) an agent or employee;

(B) a trustee, guardian, custodian, administrator, executor, conservator, receiver, or similar fiduciary;

(C) a lawyer, physician, accountant, appraiser, or other professional advisor; or

(D) an officer, director, partner, manager, or other participant in the direction of the affairs of a corporation or association.

(b) A person who is a fiduciary commits an offense if, without the consent of his beneficiary, he intentionally or knowingly solicits, accepts, or agrees to accept any benefit from another person on agreement or understanding that the benefit will influence the conduct of the fiduciary in relation to the affairs of his beneficiary.

(c) A person commits an offense if he offers, confers, or agrees to confer any benefit the acceptance of which is an offense under Subsection (b) ~~[of this section]~~.

(d) An offense under this section is a state jail felony ~~[of the third degree]~~.

(e) In lieu of a fine that is authorized by Subsection (d) ~~[of this section]~~, and in addition to the imprisonment that is authorized by that subsection, if the court finds that an individual who is a fiduciary gained a benefit through the commission of an offense under Subsection (b) ~~[of this section]~~, the court may sentence the individual to pay a fine in an amount fixed by the court, not to exceed double the value of the benefit gained. This subsection does not affect the application of Section 12.51(c) ~~[of this code]~~ to an offense under this section committed by a corporation or association.

Sec. 32.44. RIGGING PUBLICLY EXHIBITED CONTEST. (a) A person commits an offense if, with intent to affect the outcome (including the score) of a publicly exhibited contest:

(1) he offers, confers, or agrees to confer any benefit on, or threatens harm to:

(A) a participant in the contest to induce him not to use his best efforts; or

(B) an official or other person associated with the contest;  
or

(2) he tampers with a person, animal, or thing in a manner contrary to the rules of the contest.

(b) A person commits an offense if he intentionally or knowingly solicits, accepts, or agrees to accept any benefit the conferring of which is an offense under Subsection (a) ~~[of this section]~~.

(c) ~~An~~ ~~[Except as provided in Subsection (d) of this section, an]~~ offense under this section is a Class A misdemeanor.

~~[(d) An offense under this section is a felony of the third degree if the actor's conduct is in connection with betting or wagering on the contest.]~~

Sec. 32.441. ILLEGAL RECRUITMENT OF AN ATHLETE. (a) A person commits an offense if, without the consent of the governing body or a designee of the governing body of an institution of higher education, the person intentionally or knowingly solicits, accepts, or agrees to accept any benefit from another on an agreement or understanding that the benefit will influence the conduct of the person in enrolling in the institution and participating in intercollegiate athletics.

(b) A person commits an offense if he offers, confers, or agrees to confer any benefit the acceptance of which is an offense under Subsection (a) ~~[of this section]~~.

(c) It is an exception to prosecution under this section that the person offering, conferring, or agreeing to confer a benefit and the person soliciting, accepting, or agreeing to accept a benefit are related within the second degree of consanguinity or affinity, as determined under Article 5996h, Revised Statutes.

(d) It is an exception to prosecution under Subsection (a) ~~[of this section]~~ that, not later than the 60th day after the date the person accepted or agreed to accept a benefit, the person contacted a law enforcement agency and furnished testimony or evidence about the offense.

(e) An offense under ~~[Subsection (a) of]~~ this section is a:

(1) Class C misdemeanor if the value of the benefit is less than \$50;

(2) Class B misdemeanor if the value of the benefit is \$50 or more but less than \$500;

(3) Class A misdemeanor if the value of the benefit is \$500 or more but less than \$1,500;

(4) state jail felony if the value of the benefit is \$1,500 or more but less than \$20,000;

(5) felony of the third degree if the value of the benefit is \$20,000 or more but less than \$100,000;

(6) felony of the second degree if the value of the benefit is \$100,000 or more but less than \$200,000; or

(7) felony of the first degree if the value of the benefit is \$200,000 or more ~~[Class A misdemeanor. An offense under Subsection (b) of this section is a felony of the third degree].~~

Sec. 32.45. MISAPPLICATION OF FIDUCIARY PROPERTY OR PROPERTY OF FINANCIAL INSTITUTION. (a) For purposes of this section:

(1) "Fiduciary" includes:

(A) trustee, guardian, administrator, executor, conservator, and receiver;

(B) any other person acting in a fiduciary capacity, but not a commercial bailee; and

(C) an officer, manager, employee, or agent carrying on fiduciary functions on behalf of a fiduciary.

(2) "Misapply" means deal with property contrary to:

(A) an agreement under which the fiduciary holds the property; or

(B) a law prescribing the custody or disposition of the property.

(b) A person commits an offense if he intentionally, knowingly, or recklessly misapplies property he holds as a fiduciary or property of a financial institution in a manner that involves substantial risk of loss to the owner of the property or to a person for whose benefit the property is held.

(c) An offense under this section is:

(1) a Class C misdemeanor if the value of the property misapplied is less than \$50;

(2) a Class B misdemeanor if the value of the property misapplied is \$50 or more but less than \$500;

(3) a Class A misdemeanor if the value of the property misapplied is \$500 or more but less than \$1,500 [\$200];

(4) ~~[(2)]~~ a state jail felony [of the third degree] if the value of the property misapplied is \$1,500 [\$200] or more but less than \$20,000 [\$10,000];

(5) ~~[(3)]~~ a felony of the third [second] degree if the value of the property misapplied is \$20,000 [\$10,000] or more but less than \$100,000; [or]

(6) ~~[(4)]~~ a felony of the second [first] degree if the value of the property misapplied is \$100,000 or more but less than \$200,000; or

(7) a felony of the first degree if the value of the property misapplied is \$200,000 or more.

Sec. 32.46. SECURING EXECUTION OF DOCUMENT BY DECEPTION. (a) A person commits an offense if, with intent to defraud or harm any person, he, by deception, causes another to sign or execute any document affecting property or service or the pecuniary interest of any person.

(b) An offense under this section is a:

(1) Class C misdemeanor if the value of the property, service, or pecuniary interest is less than \$50;

(2) Class B misdemeanor if the value of the property, service, or pecuniary interest is \$50 or more but less than \$500;

(3) Class A misdemeanor if the value of the property, service, or pecuniary interest is \$500 or more but less than \$1,500;

(4) state jail felony if the value of the property, service, or pecuniary interest is \$1,500 or more but less than \$20,000;

(5) felony of the third degree if the value of the property, service, or pecuniary interest is \$20,000 or more but less than \$100,000;

~~(6) felony of the second degree if the value of the property, service, or pecuniary interest is \$100,000 or more but less than \$200,000; or~~

~~(7) felony of the first degree if the value of the property, service, or pecuniary interest is \$200,000 or more [felony of the third degree].~~

Sec. 32.47. FRAUDULENT DESTRUCTION, REMOVAL, OR CONCEALMENT OF WRITING. (a) A person commits an offense if, with intent to defraud or harm another, he destroys, removes, conceals, alters, substitutes, or otherwise impairs the verity, legibility, or availability of a writing, other than a governmental record.

(b) For purposes of this section, "writing" includes:

(1) printing or any other method of recording information;  
(2) money, coins, tokens, stamps, seals, credit cards, badges, trademarks;

(3) symbols of value, right, privilege, or identification; and

(4) labels, price tags, or markings on goods.

(c) Except as provided in Subsection (d) ~~[of this section]~~, an offense under this section is a Class A misdemeanor.

(d) An offense under this section is a state jail felony ~~[of the third degree]~~ if the writing:

(1) is a will or codicil of another, whether or not the maker is alive or dead and whether or not it has been admitted to probate; or

(2) is a deed, mortgage, deed of trust, security instrument, security agreement, or other writing for which the law provides public recording or filing, whether or not the writing has been acknowledged.

Sec. 32.48. ENDLESS CHAIN SCHEME. (a) For the purposes of this section:

(1) "Endless chain" means any scheme for the disposal or distribution of property whereby a participant pays a valuable consideration for the chance to receive compensation for introducing one or more additional persons into participation in the scheme or for the chance to receive compensation when a person introduced by the participant introduces a new participant.

(2) "Compensation" does not mean or include payment based on sales made to persons who are not participants in the scheme and who are not purchasing in order to participate in the scheme.

(b) A person commits an offense if he contrives, prepares, sets up, proposes, operates, promotes, or participates in an endless chain.

(c) An offense under this section is a Class B misdemeanor.

~~[Sec. 32.49. ISSUANCE OF CHECKS PRINTED ON RED PAPER.~~

~~(a) A person commits an offense if he issues a check or similar sight order for payment of money printed on dark red or other colored paper that prevents reproduction of an image of the order by microfilming or other similar reproduction equipment, knowing that the colored paper prevents reproduction.~~

~~[(b) An offense under this section is a Class A misdemeanor.~~

~~[Sec. 32.50. Debit Card Abuse. (a) For purposes of this section:~~

~~[(1) "Cardholder" means the person named on the face of a debit card to whom or for whose benefit the card is issued.~~

~~[(2) "Debit card" means an identification card, plate, coupon, book, number, or any other device authorizing a designated person or bearer to communicate a request to an unmanned teller machine or a customer convenience terminal. It includes the number or description of the device if the device itself is not produced at the time of ordering or obtaining the benefit.]~~

~~[(3) "Expired debit card" means a card bearing as its expiration date a date that has passed.]~~

~~[(4) "Unmanned teller machine" means a machine, other than a telephone, capable of being operated solely by a customer, by which a customer may communicate to a financial institution a request to withdraw a benefit for himself or for another directly from the customer's account or from the customer's account pursuant to a line of credit previously authorized by the institution for the customer.]~~

~~[(5) "Customer convenience terminal" means a device which is a particular kind of unmanned teller machine (i.e., the use of which does not involve personnel of a financial institution).]~~

~~[(b) A person commits an offense if:~~

~~[(1) with intent to obtain a benefit for himself or for another fraudulently, he intentionally or knowingly presents or uses a debit card with knowledge that:~~

~~[(A) the card, whether or not expired, has not been issued to him and is not used with the effective consent of the cardholder; or~~

~~[(B) the card has expired or has been revoked or canceled;~~

~~[(2) with intent to obtain a benefit for himself or for another, he intentionally or knowingly uses a fictitious debit card or the pretended number or description of a fictitious card;~~

~~[(3) he intentionally or knowingly receives a benefit for himself or for another that he knows has been obtained in violation of this section;~~

~~[(4) he steals a debit card or, with knowledge that it has been stolen, receives a card with intent to use it, to sell it, or to transfer it to a person other than the issuer or the cardholder;~~

~~[(5) he buys a debit card from a person who he knows is not the issuer;~~

~~[(6) not being the issuer, he sells a debit card;~~

~~[(7) not being the cardholder, and without the effective consent of the cardholder, he signs or writes his name or the name of another on a debit card with intent to use it; or~~

~~[(8) he possesses two or more incomplete debit cards that have not been issued to him with intent to complete them without the effective consent of the issuer. For purposes of this subdivision, a card is incomplete if part of the matter that an issuer requires to appear on the card before it can be used (other than the signature of the cardholder) has not yet been stamped, embossed, imprinted, or written on it.]~~

~~[(c) It is presumed that a person who used a revoked, canceled, or expired debit card had knowledge that the card had been revoked, canceled, or expired if he had received notice of revocation, cancellation, or expiration from the issuer. For purposes of this section, notice may be either notice given orally in person or by telephone, or in writing by mail]~~

or by telegram. If written notice was sent by registered or certified mail with return receipt requested, or by telegram with report of delivery requested, addressed to the cardholder at the last address shown by the records of the issuer, it is presumed that the notice was received by the cardholder no later than five days after sent.

~~[(d) An offense under this section is a felony of the third degree.~~

~~[Sec. 32.51. Penalty for Fraudulently Obtaining or Denying Workers' Compensation Benefits. (a) A person commits an offense if the person, with intent to obtain or deny payments of workers' compensation benefits under the workers' compensation laws of this state for himself or another, knowingly or intentionally:~~

~~[(1) makes a false or misleading statement;~~

~~[(2) misrepresents or conceals a material fact; or~~

~~[(3) fabricates, alters, conceals, or destroys a document other than a governmental record.~~

~~[(b) A person commits an offense if the person receives workers' compensation benefits that the person knows he is not legally entitled to receive.~~

~~[(c) An offense under Subsection (a) of this section is a Class A misdemeanor. An offense under Subsection (b) of this section is:~~

~~[(1) a Class A misdemeanor if the value of the benefits received is less than \$750;~~

~~[(2) a felony of the third degree if the value of the benefits received is \$750 or more but less than \$10,000; and~~

~~[(3) a felony of the second degree if the value of the benefits received is \$10,000 or more.~~

~~[Sec. 32.52. Fraudulent Statement to Financial Institution. (a) A person commits an offense if, with intent to defraud or harm a financial institution, he knowingly makes a materially false or misleading written statement to obtain or in an attempt to obtain moneys, accounts, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution.~~

~~[(b) An offense under this section is a Class A misdemeanor.~~

~~[Sec. 32.53. TAXICAB FARES. (a) A person who operates a taxicab commits an offense if the person intentionally extends the distance or time for a trip beyond the distance or time necessary for the trip for the purpose of increasing the fare for the trip.~~

~~[(b) An offense under this section is a Class B misdemeanor.~~

~~[Sec. 32.54. PENALTY FOR FRAUDULENTLY OBTAINING WORKERS' COMPENSATION INSURANCE COVERAGE. (a) A person commits an offense if the person, with intent to obtain workers' compensation insurance coverage for himself or another under the workers' compensation insurance laws of this state, knowingly or intentionally:~~

~~[(1) makes a false statement;~~

~~[(2) misrepresents or conceals a material fact; or~~

~~[(3) makes a false entry in, fabricates, alters, conceals, or destroys a document other than a governmental record.~~

~~[(b) An offense under Subsection (a) of this section is a felony of the third degree.~~

~~[(c) The court may order a person to pay restitution to an insurance company, the Texas workers' compensation insurance facility, or the Texas Workers' Compensation Insurance Fund if the person commits an offense under this section:~~

~~[SUBCHAPTER E. SAVINGS AND LOAN ASSOCIATIONS~~

~~[Sec. 32.71. EMBEZZLEMENT; UNAUTHORIZED ISSUANCE; FALSE ENTRY. (a) An officer, director, member of any committee, clerk, or agent of any savings and loan association in this state commits an offense if the person embezzles, abstracts, or misapplies money, funds, or credits of the association, issues or puts into circulation any warrant or other order without proper authority, issues, assigns, transfers, cancels, or delivers up any note, bond, draft, mortgage, judgment, decree, or other written instrument belonging to the association, certifies to or makes a false entry in any book, report, or statement of or to the association, with intent to deceive, injure, or defraud the association or a member of the association for the purpose of inducing any person to become a member of the association or to deceive anyone appointed to examine the affairs of the association:~~

~~[(b) A person commits an offense if the person, with intent to deceive, injure, or defraud, aids or abets any officer, member of any committee, or other person in committing any of the acts prohibited under Subsection (a):~~

~~[(c) An offense under this section is a felony punishable by imprisonment for not less than one year or more than 10 years:~~

~~[Sec. 32.72. FALSE INFORMATION; SUPPRESSING EVIDENCE. (a) Any person commits an offense if the person for the purpose of influencing the actions of an association or its employees, agents, or representatives or for the purpose of influencing the actions of The Finance Commission of Texas, the savings and loan commissioner, or employees, agents, or representatives of the Savings and Loan Department of Texas, knowingly:~~

~~[(1) removes, mutilates, destroys, or conceals a paper, book, or record of a savings and loan association or of the savings and loan commissioner or the Savings and Loan Department of Texas for the purpose of concealing a fact or suppressing evidence;~~

~~[(2) makes, passes, alters, or publishes a false, counterfeit, or forged instrument, paper, document, statement, or report to a savings and loan association or to the savings and loan commissioner or the Savings and Loan Department of Texas; or~~

~~[(3) substantially overvalues land, property, security, an asset, or income in connection with a transaction with a savings and loan association without substantiation, justification, or supporting documentation generally accepted by appraisal standards:~~

~~[(b) An offense under this section is a felony punishable by a fine of not more than \$100,000, imprisonment for not more than 10 years, or both:]~~

CHAPTER 33. COMPUTER CRIMES

Sec. 33.01. DEFINITIONS. In this chapter:

(1) "Access" means to approach, instruct, communicate with, store data in, retrieve or intercept data from, alter data or computer software in,

~~or otherwise make use of any resource of a computer, computer system, or computer network.~~

(2) "Communications common carrier" means a person who owns or operates a telephone system in this state that includes equipment or facilities for the conveyance, transmission, or reception of communications and who receives compensation from persons who use that system.

(3) [(2)] "Computer" means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device that performs logical, arithmetic, or memory functions by the manipulations of electronic or magnetic impulses and includes all input, output, processing, storage, or communication facilities that are connected or related to the device.

(4) [(3)] "Computer network" means the interconnection of two or more computers or computer systems by satellite, microwave, line, or other communication medium with the capability to transmit information among the computers.

(5) [(4)] "Computer program" means an ordered set of data representing coded instructions or statements that when executed by a computer cause the computer to process data or perform specific functions.

(6) [(5)] "Computer security system" means the design, procedures, or other measures that the person responsible for the operation and use of a computer employs to restrict the use of the computer to particular persons or uses or that the owner or licensee of data stored or maintained by a computer in which the owner or licensee is entitled to store or maintain the data employs to restrict access to the data.

(7) [(6)] "Computer services" means the product of the use of a computer, the information stored in the computer, or the personnel supporting the computer, including computer time, data processing, and storage functions.

(8) [(7)] "Computer system" means any combination of a computer or computer network [~~computers~~] with the documentation, computer software, or physical facilities supporting the computer or computer network.

(9) [(8)] "Computer software" means a set of computer programs, procedures, and associated documentation related to the operation of a computer, computer system, or computer network.

(10) [(9)] "Computer virus" means an unwanted computer program or other set of instructions inserted into a computer's memory, operating system, or program that is specifically constructed with the ability to replicate itself or [~~and~~] to affect the other programs or files in the computer by attaching a copy of the unwanted program or other set of instructions to one or more computer programs or files.

[(10) "~~Damage~~" includes ~~partial or total alteration, damage, or erasure of stored data, or interruption of computer services.~~]

(11) "Data" means a representation of information, knowledge, facts, concepts, or instructions that is being prepared or has been prepared in a formalized manner and is intended to be stored or processed, is being stored or processed, or has been stored or processed in a computer. Data may be embodied in any form, including but not limited to computer



printouts, magnetic storage media, laser storage media, and punchcards, or may be stored internally in the memory of the computer.

(12) "Effective consent" includes consent by a person legally authorized to act for the owner. Consent is not effective if:

(A) induced by deception, as defined by Section 31.01, or induced by coercion;

(B) given by a person the actor knows is not legally authorized to act for the owner;

(C) given by a person who by reason of youth, mental disease or defect, or intoxication is known by the actor to be unable to make reasonable property dispositions;

(D) given solely to detect the commission of an offense;  
or

(E) used for a purpose other than that for which the consent was given.

(13) [(12)] "Electric utility" has the meaning assigned by Subsection (c), Section 3, Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes).

(14) "Harm" includes partial or total alteration, damage, or erasure of stored data, interruption of computer services, introduction of a computer virus, or any other loss, disadvantage, or injury that might reasonably be suffered as a result of the actor's conduct.

(15) "Owner" means a person who:

(A) has title to the property, possession of the property, whether lawful or not, or a greater right to possession of the property than the actor;

(B) has the right to restrict access to the property; or

(C) is the licensee of data or computer software.

(16) "Property" means:

(A) tangible or intangible personal property including a computer, computer system, computer network, computer software, or data;  
or

(B) the use of a computer, computer system, computer network, computer software, or data.

Sec. 33.02. BREACH OF COMPUTER SECURITY. (a) A person commits an offense if the person knowingly accesses a computer, computer network, or computer system[-

[(1) uses a computer without the effective consent of the owner of the computer or a person authorized to license access to the computer and the actor knows that there exists a computer security system intended to prevent him from making that use of the computer; or

[(2) gains access to data stored or maintained by a computer] without the effective consent of the owner [or licensee of the data and the actor knows that there exists a computer security system intended to prevent him from gaining access to that data].

(b) A person commits an offense if the person intentionally or knowingly gives a password, identifying code, personal identification number, debit card number, bank account number, or other confidential information about a computer security system to another person without the

effective consent of the person employing the computer security system to restrict ~~[the use of a computer or to restrict]~~ access to a computer, computer network, computer system, or data ~~[stored or maintained by a computer]~~.

(c) An offense under this section is a Class A misdemeanor unless the actor's intent is to obtain a benefit or defraud or harm another, in which event the offense is:

(1) a state jail felony if the value of the benefit or the amount of the loss or harm is less than \$20,000; or

(2) a felony of the third degree if the value of the benefit or the amount of the loss or harm is \$20,000 or more.

(d) A person who is subject to prosecution under this section and any other section of this code may be prosecuted under either or both sections.

Sec. 33.03. ~~[HARMFUL ACCESS. (a) A person commits an offense if the person intentionally or knowingly and without authorization from the owner of the computer or a person authorized to license access to the computer:~~

~~[(1) damages, alters, or destroys a computer, computer program or software, computer system, data, or computer network;~~

~~[(2) causes a computer to interrupt or impair a government operation, public communication, public transportation, or public service providing water or gas;~~

~~[(3) uses a computer to:~~

~~[(A) tamper with government, medical, or educational records; or~~

~~[(B) receive or use records that were not intended for public dissemination to gain an advantage over business competitors;~~

~~[(4) obtains information from or introduces false information into a computer system to damage or enhance the data or credit records of a person;~~

~~[(5) causes a computer to remove, alter, erase, or copy a negotiable instrument; or~~

~~[(6) inserts or introduces a computer virus into a computer program, computer network, or computer system.~~

~~[(b) An offense under this section is a:~~

~~[(1) felony of the second degree if the value of the loss or damage caused by the conduct is \$20,000 or more;~~

~~[(2) felony of the third degree if the value of the loss or damage caused by the conduct is \$750 or more but less than \$20,000; or~~

~~[(3) Class A misdemeanor if the value of the loss or damage caused by the conduct is \$200 or more but less than \$750.~~

~~[Sec. 33.04.] DEFENSES.~~ It is an affirmative defense to prosecution under Section ~~[Sections]~~ 33.02 ~~[and 33.03 of this code]~~ that the actor was an officer, employee, or agent of a communications common carrier or electric utility and committed the proscribed act or acts in the course of employment while engaged in an activity that is a necessary incident to the rendition of service or to the protection of the rights or property of the communications common carrier or electric utility.

Sec. 33.04 [33.05]. ASSISTANCE BY ATTORNEY GENERAL. The attorney general, if requested to do so by a prosecuting attorney, may assist the prosecuting attorney in the investigation or prosecution of an offense under this chapter or of any other offense involving the use of a computer.

TITLE 8. OFFENSES AGAINST PUBLIC ADMINISTRATION  
CHAPTER 36. BRIBERY AND CORRUPT INFLUENCE

Sec. 36.01. DEFINITIONS. In this chapter:

- (1) ~~["Coercion" means a threat, however communicated:~~  
~~[(A) to commit any offense;~~  
~~[(B) to inflict bodily injury on the person threatened or~~  
~~another;~~  
~~[(C) to accuse any person of any offense;~~  
~~[(D) to expose any person to hatred, contempt, or ridicule;~~  
~~[(E) to harm the credit, business repute, or pecuniary~~  
~~interest of any person; or~~  
~~[(F) to unlawfully take or withhold action as a public~~  
~~servant, or to cause a public servant to unlawfully take or withhold action.~~  
~~[(2) "Custody" means:~~  
~~[(A) detained or under arrest by a peace officer; or~~  
~~[(B) under restraint by a public servant pursuant to an~~  
~~order of a court.~~  
~~[(3) "Official proceeding" means any type of administrative,~~  
~~executive, legislative, or judicial proceeding that may be conducted before~~  
~~a public servant authorized by law to take statements under oath.~~  
~~[(4) "Party official" means a person who holds any position or~~  
~~office in a political party, whether by election, appointment, or~~  
~~employment.~~  
~~[(2) [(5)] "Benefit" means anything reasonably regarded as~~  
~~pecuniary gain or pecuniary advantage, and includes a [including] benefit~~  
~~to any other person in whose welfare the beneficiary has a direct and~~  
~~substantial interest, but does not include an expenditure for food or~~  
~~beverage required to be reported under Chapter 305, Government Code.~~  
~~[(3) [(6)] "Vote" means to cast a ballot in an election regulated by~~  
~~law.~~

Sec. 36.02. BRIBERY. (a) A person commits an offense if he intentionally or knowingly offers, confers, or agrees to confer on another, or solicits, accepts, or agrees to accept from another:

- (1) any benefit as consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;
- (2) any benefit as consideration for the recipient's decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding;
- (3) any benefit as consideration for a violation of a duty imposed by law on a public servant or party official; or
- (4) any benefit that is a political contribution as defined by Title 15, Election Code, or that is an expenditure required to be reported under Chapter 305, Government Code, if the benefit was offered, conferred,

solicited, accepted, or agreed to pursuant to an express agreement to take or withhold a specific exercise of official discretion if such exercise of official discretion would not have been taken or withheld but for the benefit; notwithstanding any rule of evidence or jury instruction allowing factual inferences in the absence of certain evidence, direct evidence of the express agreement shall be required in any prosecution under this subdivision.

(b) It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way whether because he had not yet assumed office or he lacked jurisdiction or for any other reason.

(c) It is no defense to prosecution under this section that the benefit is not offered or conferred or that the benefit is not solicited or accepted until after:

(1) the decision, opinion, recommendation, vote, or other exercise of discretion has occurred; or

(2) the public servant ceases to be a public servant.

(d) It is an exception to the application of Subdivisions (1), (2), and (3) of Subsection (a) ~~[of this section]~~ that the benefit is a political contribution ~~[accepted]~~ as defined by Title 15, Election Code, or an expenditure required to be reported under Chapter 305, Government Code.

(e) An offense under this section is a felony of the second degree.

Sec. 36.03. COERCION OF PUBLIC SERVANT OR VOTER. (a) A person commits an offense if by means of coercion he:

(1) influences or attempts to influence a public servant in a specific exercise of his official power or a specific performance of his official duty or influences or attempts to influence a public servant to violate the public servant's known legal duty; or

(2) influences or attempts to influence a voter not to vote or to vote in a particular manner.

(b) An offense under this section is a Class A misdemeanor unless the coercion is a threat to commit a felony, in which event it is a felony of the third degree.

(c) It is an exception to the application of Subsection (a)(1) of this section that the person who influences or attempts to influence the public servant is a member of the governing body of a governmental entity, and that the action that influences or attempts to influence the public servant is an official action taken by the member of the governing body. For the purposes of this subsection, the term "official action" includes deliberations by the governing body of a governmental entity.

Sec. 36.04. IMPROPER INFLUENCE. (a) A person commits an offense if he privately addresses a representation, entreaty, argument, or other communication to any public servant who exercises or will exercise official discretion in an adjudicatory proceeding with an intent to influence the outcome of the proceeding on the basis of considerations other than those authorized by law.

(b) For purposes of this section, "adjudicatory proceeding" means any proceeding before a court or any other agency of government in which the

legal rights, powers, duties, or privileges of specified parties are determined.

(c) An offense under this section is a Class A misdemeanor.

Sec. 36.05. TAMPERING WITH WITNESS. (a) A person commits an offense if, with intent to influence the witness, he offers, confers, or agrees to confer any benefit on a witness or prospective witness in an official proceeding or coerces a witness or prospective witness in an official proceeding:

- (1) to testify falsely;
- (2) to withhold any testimony, information, document, or thing;
- (3) to elude legal process summoning him to testify or supply evidence; ~~or~~
- (4) to absent himself from an official proceeding to which he has been legally summoned; ~~or~~
- (5) to abstain from, discontinue, or delay the prosecution of another witness.

(b) A witness or prospective witness in an official proceeding commits an offense if he knowingly solicits, accepts, or agrees to accept any benefit on the representation or understanding that he will do any of the things specified in Subsection (a) ~~[of this section]~~.

(c) It is a defense to prosecution under Subsection (a)(5) that the benefit received was:

- (1) reasonable restitution for damages suffered by the complaining witness as a result of the offense; and
- (2) a result of an agreement negotiated with the assistance or acquiescence of an attorney for the state who represented the state in the case.

(d) An offense under this section is a state jail felony ~~[of the third degree]~~.

Sec. 36.06. Obstruction or RETALIATION. (a) A person commits an offense if he intentionally or knowingly harms or threatens to harm another by an unlawful act;

(1) in retaliation for or on account of the service of another as a public servant, witness, prospective witness, informant, or a person who has reported ~~or who the actor knows intends to report~~ the occurrence of a crime; ~~or~~

(2) to prevent or delay the service of another as a public servant, witness, prospective witness, informant, or a person who has reported ~~or who the actor knows intends to report~~ the occurrence of a crime.

(b) For purposes of this section, "informant" means a person who has communicated information to the government in connection with any governmental function.

(c) An offense under this section is a felony of the third degree.

Sec. 36.07. ACCEPTANCE OF HONORARIUM. (a) A public servant commits an offense if the public servant solicits, accepts, or agrees to accept an honorarium in consideration for services that the public servant would not have been requested to provide but for the public servant's official position or duties.

(b) This section does not prohibit a public servant from accepting transportation and lodging expenses ~~[permitted under Section 305.025(b)(2), Government Code,]~~ in connection with a conference or similar event in which the public servant renders services, such as addressing an audience or engaging in a seminar, to the extent that those services are more than merely perfunctory, or from accepting meals in connection with such an event.

(c) An offense under this section is a Class A misdemeanor.

Sec. 36.08. GIFT TO PUBLIC SERVANT BY PERSON SUBJECT TO HIS JURISDICTION. (a) A public servant in an agency performing regulatory functions or conducting inspections or investigations commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows to be subject to regulation, inspection, or investigation by the public servant or his agency.

(b) A public servant in an agency having custody of prisoners commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows to be in his custody or the custody of his agency.

(c) A public servant in an agency carrying on civil or criminal litigation on behalf of government commits an offense if he solicits, accepts, or agrees to accept any benefit from a person against whom the public servant knows litigation is pending or contemplated by the public servant or his agency.

(d) A public servant who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions of government commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows is interested in or likely to become interested in any contract, purchase, payment, claim, or transaction involving the exercise of his discretion.

(e) A public servant who has judicial or administrative authority, who is employed by or in a tribunal having judicial or administrative authority, or who participates in the enforcement of the tribunal's decision, commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows is interested in or likely to become interested in any matter before the public servant or tribunal.

(f) A member of the legislature, the governor, the lieutenant governor, or a person employed by a member of the legislature, the governor, the lieutenant governor, or an agency of the legislature commits an offense if he solicits, accepts, or agrees to accept any benefit from any person.

(g) A public servant who is a hearing examiner employed by an agency performing regulatory functions and who conducts hearings in contested cases commits an offense if the public servant solicits, accepts, or agrees to accept any benefit from any person who is appearing before the agency in a contested case, who is doing business with the agency, or who the public servant knows is interested in any matter before the public servant. The exception provided by Section 36.10(b) ~~[of this code]~~ does not apply to a benefit under this subsection.

(h) An offense under this section is a Class A misdemeanor.

(i) A public servant who receives an unsolicited benefit that the public servant is prohibited from accepting under this section may donate the benefit to a governmental entity that has the authority to accept the gift or may donate the benefit to a recognized tax-exempt charitable organization formed for educational, religious, or scientific purposes.

Sec. 36.09. OFFERING GIFT TO PUBLIC SERVANT. (a) A person commits an offense if he offers, confers, or agrees to confer any benefit on a public servant that he knows the public servant is prohibited by law from accepting.

(b) An offense under this section is a Class A misdemeanor.

Sec. 36.10. NON-APPLICABLE. (a) Sections 36.08 (Gift to Public Servant) and 36.09 (Offering Gift to Public Servant) of this code do not apply to:

(1) a fee prescribed by law to be received by a public servant or any other benefit to which the public servant is lawfully entitled or for which he gives legitimate consideration in a capacity other than as a public servant;

(2) a gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient; or

(3) a benefit to a public servant required to file a statement under Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes), or a report under Title 15, Election Code, that is derived from a function in honor or appreciation of the recipient if:

(A) the benefit and the source of any benefit in excess of \$50 is reported in the statement; and

(B) the benefit is used solely to defray the expenses that accrue in the performance of duties or activities in connection with the office which are nonreimbursable by the state or political subdivision;

(4) a political contribution as defined by Title 15, Election Code; ~~or~~

(5) a gift, award, or memento to a member of the legislative or executive branch that is required to be reported under Chapter 305, Government Code; ~~or~~

(6) an item with a value of less than \$50, excluding cash or a negotiable instrument as described by Section 3.104, Business & Commerce Code.

(b) Section 36.08 (Gift to Public Servant) ~~[of this code]~~ does not apply to food, lodging, transportation, or entertainment accepted as a guest and, if the donee is required by law to report those items, reported by the donee in accordance with that law.

(c) Section 36.09 (Offering Gift to Public Servant) ~~[of this code]~~ does not apply to food, lodging, transportation, or entertainment accepted as a guest and, if the donor is required by law to report those items, reported by the donor in accordance with that law.

#### CHAPTER 37. PERJURY AND OTHER FALSIFICATION

Sec. 37.01. DEFINITIONS. In this chapter:

(1) "Governmental record" means:

(A) anything belonging to, received by, or kept by government for information;

(B) anything required by law to be kept by others for information of government; or

(C) a license, certificate, permit, seal, title, or similar document issued by government.

(2) ~~["Official proceeding" means any type of administrative, executive, legislative, or judicial proceeding that may be conducted before a public servant authorized by law to take statements under oath.~~

~~[(3)]~~ "Statement" means any representation of fact.

Sec. 37.02. PERJURY. (a) A person commits an offense if, with intent to deceive and with knowledge of the statement's meaning:

(1) he makes a false statement under oath or swears to the truth of a false statement previously made[;] and

~~[(2)]~~ the statement is required or authorized by law to be made under oath; or

(2) he makes a false unsworn declaration under Chapter 132, Civil Practice and Remedies Code.

(b) An offense under this section is a Class A misdemeanor.

Sec. 37.03. AGGRAVATED PERJURY. (a) A person commits an offense if he commits perjury as defined in Section 37.02 ~~[of this code]~~, and the false statement:

(1) is made during or in connection with an official proceeding; and

(2) is material.

(b) An offense under this section is a felony of the third degree.

Sec. 37.04. MATERIALITY. (a) A statement is material, regardless of the admissibility of the statement under the rules of evidence, if it could have affected the course or outcome of the official proceeding.

(b) It is no defense to prosecution under Section 37.03 ~~[of this code]~~ (Aggravated Perjury) that the declarant mistakenly believed the statement to be immaterial.

(c) Whether a statement is material in a given factual situation is a question of law.

Sec. 37.05. RETRACTION. It is a defense to prosecution under Section 37.03 ~~[of this code]~~ (Aggravated Perjury) that the actor retracted his false statement:

(1) before completion of the testimony at the official proceeding; and

(2) before it became manifest that the falsity of the statement would be exposed.

Sec. 37.06. INCONSISTENT STATEMENTS. An information or indictment for perjury under Section 37.02 ~~[of this code]~~ or aggravated perjury under Section 37.03 ~~[of this code]~~ that alleges that the declarant has made statements under oath, both of which cannot be true, need not allege which statement is false. At the trial the prosecution need not prove which statement is false.

Sec. 37.07. IRREGULARITIES NO DEFENSE. (a) It is no defense to prosecution under Section 37.02 (Perjury) or 37.03 (Aggravated Perjury)



~~[of this code]~~ that the oath was administered or taken in an irregular manner, or that there was some irregularity in the appointment or qualification of the person who administered the oath.

(b) It is no defense to prosecution under Section 37.02 (Perjury) or 37.03 (Aggravated Perjury) ~~[of this code]~~ that a document was not sworn to if the document contains a recital that it was made under oath, the declarant was aware of the recital when he signed the document, and the document contains the signed jurat of a public servant authorized to administer oaths.

Sec. 37.08. FALSE REPORT TO PEACE OFFICER. (a) A person commits an offense if, with intent to deceive, he knowingly makes a false statement to a peace officer conducting a criminal investigation and the statement is material to the investigation ~~he:~~

~~[(1) reports to a peace officer an offense or incident within the officer's concern, knowing that the offense or incident did not occur; or~~

~~[(2) makes a report to a peace officer relating to an offense or incident within the officer's concern knowing that he has no information relating to the offense or incident].~~

(b) An offense under this section is a Class B misdemeanor.

Sec. 37.09. TAMPERING WITH OR FABRICATING PHYSICAL EVIDENCE. (a) A person commits an offense if, knowing that an investigation or official proceeding is pending or in progress, he:

(1) alters, destroys, or conceals any record, document, or thing with intent to impair its verity, legibility, or availability as evidence in the investigation or official proceeding; or

(2) makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent to affect the course or outcome of the investigation or official proceeding.

(b) This section shall not apply if the record, document, or thing concealed is privileged or is the work product of the parties to the investigation or official proceeding.

(c) An offense under this section is a felony of the third degree.

Sec. 37.10. TAMPERING WITH GOVERNMENTAL RECORD. (a) A person commits an offense if he:

(1) knowingly makes a false entry in, or false alteration of, a governmental record;

(2) makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent that it be taken as a genuine governmental record;

(3) intentionally destroys, conceals, removes, or otherwise impairs the verity, legibility, or availability of a governmental record; ~~[or]~~

(4) possesses, sells, or offers to sell a governmental record or a blank governmental record form with intent that it be used unlawfully; ~~[or]~~

(5) ~~(4)~~ makes, presents, or uses a governmental record with knowledge of its falsity; ~~or~~

(6) ~~(5)~~ possesses, sells, or offers to sell a governmental record or a blank governmental record form with knowledge that it was obtained unlawfully.

(b) It is an exception to the application of Subsection (a)(3) of this section that the governmental record is destroyed pursuant to legal authorization. With regard to the destruction of a local government record, legal authorization includes compliance with the provisions of Subtitle C, Title 6, Local Government Code.

(c) Except as provided in Subsection (d) ~~[of this section]~~, an offense under this section is a Class A misdemeanor unless the actor's intent is to defraud or harm another, in which event the offense is a state jail felony ~~[of the third degree]~~.

(d) An offense under this section is a felony of the third degree if it is shown on the trial of the offense that the governmental record was a license, certificate, permit, seal, title, or similar document issued by government, unless the actor's intent is to defraud or harm another, in which event the offense is a felony of the second degree.

(e) It is an affirmative defense to prosecution for possession under Subsection ~~(a)(6) [(a)(5) of this section]~~ that the possession occurred in the actual discharge of official duties as a public servant.

(f) It is a defense to prosecution under Subsection (a)(1), (a)(2) or (a)(5) that the false entry or false information could have no effect on the government's purpose for requiring the governmental record.

(g) A person is presumed to intend to defraud or harm another if the person acts with respect to two or more of the same type of governmental records or blank governmental record forms and if each governmental record or blank governmental record form is a license, certificate, permit, seal, title, or similar document issued by government.

Sec. 37.11. IMPERSONATING PUBLIC SERVANT. (a) A person commits an offense if he impersonates a public servant with intent to induce another to submit to his pretended official authority or to rely on his pretended official acts.

(b) An offense under this section is a Class A misdemeanor unless the person impersonated a peace officer, in which event it is a felony of the third degree.

Sec. 37.12. FALSE IDENTIFICATION AS PEACE OFFICER; MISREPRESENTATION OF PROPERTY. (a) A person commits an offense if:

(1) the person makes, provides to another person, or possesses a card, document, badge, insignia, shoulder emblem, or other item bearing an insignia of a law enforcement agency that identifies a person as a peace officer or a reserve law enforcement officer; and

(2) the person who makes, provides, or possesses the item bearing the insignia knows that the person so identified by the item is not ~~commissioned as a [certified or licensed by the Commission on Law Enforcement Officer Standards and Education in the capacity of]~~ peace officer or reserve law enforcement officer as indicated on the item.

(b) It is a defense to prosecution under this section that:

(1) the card, document, badge, insignia, shoulder emblem, or other item bearing an insignia of a law enforcement agency clearly identifies the person as an honorary or junior peace officer or reserve law enforcement officer, or as a member of a junior posse;

(2) the person identified as a peace officer or reserve law enforcement officer by the item bearing the insignia was commissioned ~~[certified or licensed]~~ in that capacity when the item was made; or

(3) the item was used or intended for use exclusively for decorative purposes or in an artistic or dramatic presentation.

(c) In this section, "reserve law enforcement officer" has the same meaning as is given that term in Section 6, Chapter 546, Acts of the 59th Legislature, Regular Session, 1965 (Article 4413(29aa), Vernon's Texas Civil Statutes).

(d) A person commits an offense if the person intentionally or knowingly misrepresents an object as property belonging to a law enforcement agency.

(e) An offense under this section is a Class B misdemeanor.

#### CHAPTER 38. OBSTRUCTING GOVERNMENTAL OPERATION

##### Sec. 38.01. DEFINITIONS. In this chapter:

(1) ~~["Complaining witness" means the victim of a crime or a person who signs a criminal complaint.~~

~~[(2)]~~ "Custody" means ~~[detained or]~~ under arrest by a peace officer or under restraint by a public servant pursuant to an order of a court.

(2) ~~[(3)]~~ "Escape" means unauthorized departure from custody or failure to return to custody following temporary leave for a specific purpose or limited period or following leave that is part of an intermittent sentence, but does not include a violation of conditions of community supervision ~~[probation]~~ or parole.

(3) ~~[(4)]~~ "Fugitive from justice" means a person for whom a valid arrest warrant has been issued. ~~["Economic benefit" means anything reasonably regarded as an economic gain or advantage.]~~

(4) ~~[(5)]~~ "Funeral establishment" means an establishment licensed under Section 4, Chapter 251, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, Vernon's Texas Civil Statutes).

(5) ~~[(6)]~~ "Governmental function" includes any activity that a public servant is lawfully authorized to undertake on behalf of government.

(6) ~~[(7)]~~ "Hospital" means a general hospital or special hospital as defined by Chapter 241, Health and Safety Code.

(7) ~~[(8)]~~ "Member of the family" means anyone related within the third degree of consanguinity or affinity, as determined under Article 5996h, Revised Statutes.

~~[(9)]~~ ~~"Official proceeding" means:~~

~~[(A)] a proceeding before a magistrate, court, or grand jury of this state;~~

~~[(B)] a proceeding before the legislature or an inquiry authorized by either house or any joint committee established by a joint or concurrent resolution of the two houses of the legislature or any committee or subcommittee of either house of the legislature;~~

~~[(C)] a proceeding in which pursuant to lawful authority a court orders attendance or the production of evidence; or~~

~~[(D)] a proceeding that otherwise is made expressly subject to this chapter.]~~

(8) ~~(10)~~ "Qualified nonprofit organization" means a nonprofit organization that meets the following conditions:

(A) the primary purposes of the organization do not include the rendition of legal services or education regarding legal services;

(B) the recommending, furnishing, paying for, or educating persons regarding legal services is incidental and reasonably related to the primary purposes of the organization;

(C) the organization does not derive a financial benefit from the rendition of legal services by a lawyer; and

(D) the person for whom the legal services are rendered, and not the organization, is recognized as the client of a lawyer.

(9) ~~(11)~~ "Solicit" means to communicate in person or by telephone with a claimant or defendant or with a member of the claimant's or defendant's family when neither the person receiving the communication nor anyone acting on that person's behalf has requested the communication. The term does not include communicating by a family member of the person receiving a communication, communicating by an attorney who has a prior attorney-client relationship with the person receiving the communication, or communicating with a qualified nonprofit organization for the purpose of educating laymen to recognize legal problems, to make intelligent selection of legal counsel, or to use available legal services.

Sec. 38.02. FAILURE TO IDENTIFY. (a) A person commits an offense if he intentionally refuses to ~~report or~~ give his name, residence address, or date of birth to a peace officer who has lawfully arrested the person and requested the information.

(b) A person commits an offense if he intentionally ~~reports or~~ gives a false or fictitious name, residence address, or date of birth to a peace officer who has:

- (1) lawfully arrested the person;
- (2) lawfully detained the person; or

(3) requested the information from a person that the peace officer has good cause to believe is a witness to a criminal offense.

(c) ~~[In this section, "fugitive from justice" means a person for whom a valid arrest warrant has been issued by a magistrate of this state, if the warrant has not been executed.~~

~~(d)~~ Except as provided by Subsection ~~(d)~~ ~~(e)~~ of this section, an offense under this section is a Class C misdemeanor.

~~(d)~~ ~~(e)~~ If it is shown on the trial of an offense under this section that the defendant was a fugitive from justice at the time of the offense ~~[or that the defendant has been previously convicted of an offense under this section]~~, the offense is a Class B misdemeanor.

Sec. 38.03. RESISTING ARREST, SEARCH, OR TRANSPORTATION. (a) A person commits an offense if he intentionally prevents or obstructs a person he knows is a peace officer or a person acting in a peace officer's presence and at his direction from effecting an arrest, search, or transportation of the actor or another by using force against the peace officer or another.

(b) It is no defense to prosecution under this section that the arrest or search was unlawful.

(c) Except as provided in Subsection (d) ~~[of this section]~~, an offense under this section is a Class A misdemeanor.

(d) An offense under this section is a felony of the third degree if the actor uses a deadly weapon to resist the arrest or search.

Sec. 38.04. EVADING ARREST OR DETENTION. (a) A person commits an offense if he intentionally flees from a person he knows is a peace officer attempting lawfully to arrest ~~[him]~~ or detain him ~~[for the purpose of questioning or investigating possible criminal activity]~~.

~~(b) [It is an exception to the application of this section that the attempted arrest is unlawful or the detention is without reasonable suspicion to investigate.]~~

~~[(c) It is presumed that the actor recklessly engaged in conduct placing another in imminent danger of serious bodily injury under Subsection (d) of this section if the actor operated a motor vehicle while intoxicated during the commission of the offense. In this subsection, "intoxicated" has the meaning assigned that term by Article 67011-1, Revised Statutes.]~~

~~[(d)]~~ An offense under this section is a Class B misdemeanor, except that the offense is:

~~[(1) a Class A misdemeanor if the actor, during the commission of the offense, recklessly engaged in conduct that placed another in imminent danger of serious bodily injury; or~~

~~[(2)]~~ a felony of the third degree if a peace officer suffers serious bodily injury or death from any cause other than an assault or homicide by the actor as a direct result of an attempt by the officer to apprehend the actor while the actor is in flight.

Sec. 38.05. HINDERING APPREHENSION OR PROSECUTION. (a) A person commits an offense if, with intent to hinder the arrest, prosecution, conviction, or punishment of another for an offense, he:

(1) harbors or conceals the other;

(2) provides or aids in providing the other with any means of avoiding arrest or effecting escape; or

(3) warns the other of impending discovery or apprehension.

(b) It is a defense to prosecution under Subsection (a)(3) ~~[of this section]~~ that the warning was given in connection with an effort to bring another into compliance with the law.

(c) An offense under this section is a Class A misdemeanor, except that the offense is a felony of the third degree if the person who is harbored, concealed, provided with a means of avoiding arrest or effecting escape, or warned of discovery or apprehension is under arrest for, charged with, or convicted of a felony and the person charged under this section knew that the person they harbored, concealed, provided with a means of avoiding arrest or effecting escape, or warned of discovery or apprehension is under arrest for, charged with, or convicted of a felony.

Sec. 38.06. ~~[COMPOUNDING. (a) A complaining witness commits an offense if, after criminal proceedings have been instituted, he solicits, accepts, or agrees to accept any benefit in consideration of abstaining from, discontinuing, or delaying the prosecution of another for an offense.]~~

~~[(b) It is a defense to prosecution under this section that the benefit received was:~~

~~[(1) reasonable restitution for damages suffered by the complaining witness as a result of the offense; and~~

~~[(2) the result of an agreement negotiated with the assistance or acquiescence of an attorney for the state who represented the state in the case.~~

~~[(c) An offense under this section is a Class A misdemeanor.~~

~~[Sec. 38.07.] ESCAPE. (a) A person commits an offense if he escapes from custody when he is:~~

- ~~(1) under arrest for, charged with, or convicted of an offense; or~~
- ~~(2) in custody pursuant to a lawful order of a court.~~

~~(b) Except as provided in Subsections (c), [and] (d), and (e) [of this section], an offense under this section is a Class A misdemeanor.~~

~~(c) An offense under this section is a felony of the third degree if the actor:~~

- ~~(1) is under arrest for, charged with, or convicted of a felony; or~~
- ~~(2) is confined in a secure correctional facility [penal institution].~~

~~(d) An offense under this section is a felony of the second degree if the actor [used or threatened to use a deadly weapon] to effect his escape causes bodily injury.~~

~~(e) An offense under this section is a felony of the first degree if to effect his escape the actor:~~

- ~~(1) causes serious bodily injury; or~~
- ~~(2) uses or threatens to use a deadly weapon.~~

~~Sec. 38.07 [38.08]. PERMITTING OR FACILITATING ESCAPE. (a) An official or employee of a correctional facility [an institution that is responsible for maintaining persons in custody] commits an offense if he [intentionally,] knowingly[, or recklessly] permits or facilitates the escape of a person in custody.~~

~~(b) A person commits an offense if he [intentionally or] knowingly causes or facilitates the escape of one who is in custody pursuant to:~~

- ~~(1) an allegation or adjudication of delinquency; or~~
- ~~(2) [a statutory procedure authorizing] involuntary commitment for mental illness under Subtitle C, Title 7, Health and Safety Code, or for chemical dependency under Chapter 462, Health and Safety Code[, alcoholism, or drug addiction].~~

~~(c) Except as provided in Subsections [Subsection] (d) and (e) [of this section], an offense under this section is a Class A misdemeanor.~~

~~(d) An offense under this section is a felony of the third degree if[-~~

- ~~[(1)] the person in custody;~~
- ~~(1) was under arrest for, charged with, or convicted of a felony;~~

~~or~~

~~(2) [the person in custody] was confined in a correctional facility other than a secure correctional facility after conviction of a felony.~~

~~(e) An offense under this section is a felony of the second degree if:~~

- ~~(1) [penal institution];~~

~~[(3)] the actor or the person in custody used or threatened to use a deadly weapon to effect the escape; or~~

(2) ~~(4)~~ the person in custody was confined in a secure correctional facility after conviction of a felony ~~[offense under Subsection (a) of this section was committed intentionally]~~.

Sec. ~~38.08~~ [38.09]. EFFECT OF UNLAWFUL CUSTODY. It is no defense to prosecution under Section ~~38.06~~ [38.07 ~~(Escape)~~] or ~~38.07~~ [38.08 ~~(Facilitating Escape)~~ of this code] that the custody was unlawful.

Sec. ~~38.09~~ [38.10]. IMPLEMENTS FOR ESCAPE. (a) A person commits an offense if, with intent to facilitate escape, he introduces into a correctional facility ~~[penal institution]~~, or provides a person in custody or an inmate with, a deadly weapon or anything that may be useful for escape.

(b) An offense under this section is a felony of the third degree unless the actor introduced or provided a deadly weapon, in which event the offense is a felony of the second degree.

Sec. ~~38.10~~ [38.11]. BAIL JUMPING AND FAILURE TO APPEAR. (a) A person lawfully released from custody, with or without bail, on condition that he subsequently appear commits an offense if he intentionally or knowingly fails to appear in accordance with the terms of his release.

(b) It is a defense to prosecution under this section that the appearance was incident to community supervision, parole, or an intermittent sentence ~~[This section does not apply to appearances incident to probation or parole]~~.

(c) It is a defense to prosecution under this section that the actor had a reasonable excuse for his failure to appear in accordance with the terms of his release.

(d) Except as provided in Subsections (e) and (f) ~~[of this section]~~, an offense under this section is a Class A misdemeanor.

(e) An offense under this section is a Class C misdemeanor if the offense for which the actor's appearance was required is punishable by fine only.

(f) An offense under this section is a state jail felony ~~[of the third degree]~~ if the offense for which the actor's appearance was required is classified as a felony.

Sec. ~~38.11~~ [38.111. FAILURE TO RETURN TO CUSTODY FOLLOWING WORK RELEASE. (a) A person serving a sentence under Section 5 or 6, Article 42.03, Code of Criminal Procedure, commits an offense if, having been released from custody as provided by either of those sections, he fails to return to custody as required under the terms of his sentence.

~~(b) An offense under this section is a Class A misdemeanor.~~

[Sec. 38.112]. PROHIBITED SUBSTANCES IN Correctional Facility or on Property of Texas Department of Criminal Justice ~~[Correctional Facilities]~~. (a) A person commits an offense if the person provides an alcoholic beverage, controlled substance, or dangerous drug to an inmate of a correctional facility ~~[municipal or county jail]~~, except on the prescription of a physician.

(b) A person commits an offense if the person takes an alcoholic beverage, [a] controlled substance, or dangerous drug into a correctional

facility, ~~[municipal or county jail or a correctional facility authorized by Subchapter F, Chapter 351, Local Government Code]~~ except for delivery to a correctional facility ~~[jail or correctional facility]~~ warehouse, pharmacy, or physician.

(c) ~~[A person commits an offense if the person provides an alcoholic beverage, controlled substance, or dangerous drug to an inmate of the institutional division, except on the prescription of a physician.]~~

~~[(d)]~~ A person commits an offense if the person takes a controlled substance or dangerous drug on property owned, used, or controlled by the Texas Department of Criminal Justice ~~[into a correctional facility authorized by Chapter 495, Government Code, or into the confines of property owned by the institutional division and used or occupied by inmates]~~, except for delivery to a ~~[an institutional division or correctional facility]~~ warehouse, pharmacy, or physician on property owned, used, or controlled by the department.

(d) ~~[(e)]~~ A person commits an offense if the person possesses a controlled substance or dangerous drug while on property owned, used, or controlled by the Texas Department of Criminal Justice ~~[in the confines of property belonging to the institutional division].~~

(e) ~~[(f)]~~ It is an affirmative defense to prosecution under Subsection (d) ~~[(e)]~~ of this section that the person possessed the controlled substance or dangerous drug pursuant to a prescription issued by a practitioner or while delivering the substance or drug to a ~~[an institutional division]~~ warehouse, pharmacy, or physician on property owned, used, or controlled by the department.

(f) ~~[(g)]~~ In this section:

(1) ~~["Alcoholic beverage" has the meaning assigned by Section 1.04(1), Alcoholic Beverage Code.]~~

~~[(2)]~~ "Controlled substance" has the meaning assigned by Section 481.002, Health and Safety Code.

~~[(3)]~~ "Dangerous drug" has the meaning assigned by Section 483.001, Health and Safety Code.

~~[(4)]~~ "Institutional division" means the institutional division of the Texas Department of Criminal Justice.

~~[(5)]~~ "Practitioner" has the meaning assigned by Section 481.002, Health and Safety Code.

(2) ~~[(6)]~~ "Prescription" has the meaning assigned by Section 481.002, Health and Safety Code.

(g) ~~[(h)]~~ An offense under this section is a felony of the third degree.

(h) Notwithstanding Section 15.01(d), if a person commits the offense of criminal attempt to commit an offense under Subsection (a) or (b), the offense committed under Section 15.01 is a felony of the third degree.

Sec. 38.113. UNAUTHORIZED ABSENCE FROM COMMUNITY CORRECTIONS FACILITY. (a) A person commits an offense if the person is required as a condition of probation to submit to a period of detention or treatment in a community corrections facility and the person fails to report to or leaves the facility without the approval of the court, the community supervision and corrections department supervising the person, or the director of the facility.



(b) An offense under this section is a Class A misdemeanor.

Sec. 38.12. BARRATRY. (a) A person commits an offense if, with intent to obtain a ~~[an economic]~~ benefit or to harm another [for himself], he:

(1) institutes any suit or claim in which he knows he has no interest;

(2) institutes any suit or claim that he knows is false;

(3) solicits employment for himself or another to prosecute or defend a suit or to collect a claim; or

(4) procures another to solicit for him or another employment to prosecute or defend a suit or to collect a claim.

~~(b) [Intent to obtain an economic benefit is presumed if the person accepts employment for a fee, accepts a fee, or accepts or agrees to accept money or any economic benefit.]~~

~~[(c)]~~ Except as provided by Subsection ~~(c)~~ ~~[(d) of this section]~~, an offense under Subsection (a) ~~[of this section]~~ is a Class A misdemeanor.

~~(c) [(d)]~~ An offense under Subsection (a)(3) or (a)(4) ~~[of this section]~~ is a state jail felony ~~[of the third degree]~~ if it is shown on the trial of the offense that:

~~[(1) the defendant has previously been convicted under Subsection (a)(3) or (a)(4) of this section; and~~

~~[(2)]~~ the solicitation is performed in whole or in part:

~~(1) [(A)]~~ in a hospital, funeral establishment, or public or private cemetery or at the scene of an accident;

~~(2) [(B)]~~ by using a person who is an employee of:

~~(A) [(i)]~~ this state;

~~(B) [(ii)]~~ a political subdivision of this state, including a county, municipality, or special purpose district or authority; or

~~(C) [(iii)]~~ a hospital or funeral establishment; or

~~(3) [(E)]~~ by impersonating a clergyman, public employee, or emergency assistance worker or volunteer.

~~[(c) Final conviction of felony barratry is a serious crime for all purposes and acts, specifically including the State Bar Rules.]~~

Sec. 38.13. HINDERING PROCEEDINGS BY DISORDERLY CONDUCT. (a) A person commits an offense if he intentionally hinders an official proceeding by noise or violent or tumultuous behavior or disturbance.

(b) A person commits an offense if he recklessly hinders an official proceeding by noise or violent or tumultuous behavior or disturbance and continues after explicit official request to desist.

(c) An offense under this section is a Class A misdemeanor.

Sec. 38.14. ~~[PREVENTING EXECUTION OF CIVIL PROCESS.]~~ ~~(a) A person commits an offense if he intentionally or knowingly prevents the execution of any process in a civil cause.~~

~~[(b) It is an exception to the application of this section that the actor evaded service of process by avoiding detection.]~~

~~[(c) An offense under this section is a Class C misdemeanor.]~~

~~[Sec. 38.15. Tampering with Devices Designed to Prevent Driving While Intoxicated. (a) In this section, "device" means a device approved~~

~~by the Department of Public Safety under Section 23A(f), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), that makes impractical the operation of a motor vehicle if ethyl alcohol is detected in the breath of the operator:~~

~~[(b) A person commits an offense if the person intentionally or knowingly, for the purpose of allowing a person who is subject to a condition of probation under Section 6f(b), Article 42.12, Code of Criminal Procedure, or who is subject to driver's license restrictions under Section 23A(f) or 25(a), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), to operate a motor vehicle whether or not the person is intoxicated:~~

~~[(1) tampers with a device; or~~

~~[(2) introduces or allows to be introduced into the device any substance other than the deep-lung air of the probationer or restricted operator.~~

~~[(c) An offense under this section is a Class B misdemeanor.~~

~~[Sec. 38.16. Injury to or Interference With Animal Under Supervision of Peace Officer or Department of Corrections Employee. (a) A person commits an offense if, knowing that a dog, horse, or other animal is under the supervision of a peace officer, corrections officer, or jailer and is being used for law enforcement, corrections, prison or jail security, or investigative purposes, the person knowingly, intentionally, or recklessly:~~

~~[(1) interferes with the animal; or~~

~~[(2) injures the animal.~~

~~[(b) An offense under this section is a Class A misdemeanor.~~

~~[Sec. 38.17.] TAKING OR ATTEMPTING TO TAKE WEAPON FROM PEACE OFFICER. (a) In this section, "firearm" has the meanings assigned by Section 46.01 [of this code].~~

~~(b) A person commits an offense if the person intentionally or knowingly and with force takes or attempts to take from a peace officer the officer's firearm, nightstick, or personal protection chemical dispensing device with the intention of harming the officer or a third person.~~

~~(c) The actor is presumed to have known that the peace officer was a peace officer if the officer was wearing a distinctive uniform or badge indicating his employment, or if the officer identified himself as a peace officer.~~

~~(d) It is a defense to prosecution under this section that the defendant took or attempted to take the weapon from a peace officer who was using force against the defendant or another in excess of the amount of force permitted by law.~~

~~(e) An offense under this section is a state jail felony [of the third degree].~~

~~Sec. 38.15 [38.18]. INTERFERENCE WITH Public DUTIES [of Public Servants]. (a) A person commits an offense if the person [intentionally, knowingly, recklessly, or] with criminal negligence interrupts, disrupts, impedes, or otherwise interferes with:~~

~~(1) a peace officer while the peace officer is performing a duty or exercising authority imposed or granted by law;~~

(2) a person who is employed to provide emergency medical services including the transportation of ill or injured persons while the person is performing that duty; ~~or~~

(3) a fire fighter, while the fire fighter is fighting a fire or investigating the cause of a fire;

(4) an animal under the supervision of a peace officer, corrections officer, or jailer, if the person knows the animal is being used for law enforcement, corrections, prison or jail security, or investigative purposes; or

(5) the transmission of a communication over a citizen's band radio channel, the purpose of which communication is to inform or inquire about an emergency.

(b) An offense under this section is a Class B misdemeanor.

(c) It is a defense to prosecution under Subsection (a)(1) ~~[of this section]~~ that the conduct engaged in by the defendant was intended to warn a person operating a motor vehicle of the presence of a peace officer who was enforcing the provisions of the Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes).

(d) It is a defense to prosecution under this section that the interruption, disruption, impediment, or interference alleged consisted of speech only.

(e) In this section, "emergency" means a condition or circumstance in which an individual is or is reasonably believed by the person transmitting the communication to be in imminent danger of serious bodily injury or in which property is or is reasonably believed by the person transmitting the communication to be in imminent danger of damage or destruction.

#### CHAPTER 39. ABUSE OF OFFICE

##### Sec. 39.01. DEFINITIONS. In this chapter:

(1) "Law relating to a public servant's office or employment" means a law that specifically applies to a person acting in the capacity of a public servant and that directly or indirectly:

(A) imposes a duty on the public servant; or

(B) governs the conduct of the public servant.

(2) "Misuse" means to deal with property contrary to:

(A) an agreement under which the public servant holds the property;

(B) a contract of employment or oath of office of a public servant;

(C) a law, including provisions of the General Appropriations Act specifically relating to government property, that prescribes the manner of custody or disposition of the property; or

(D) a limited purpose for which the property is delivered or received.

Sec. 39.02. ABUSE OF OFFICIAL CAPACITY [MISCONDUCT]. (a) A public servant commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he intentionally or knowingly:

(1) violates a law relating to the public servant's [his] office or employment; or

(2) ~~misuses government property, services, personnel, or [misapplies]~~ any other thing of value belonging to the government that has come into ~~the public servant's [his]~~ custody or possession by virtue of ~~the public servant's [his]~~ office or employment.

(b) An offense under Subsection (a)(1) ~~[of this section]~~ is a Class A misdemeanor.

(c) An offense under Subsection (a)(2) ~~[of this section]~~ is:

(1) a Class C misdemeanor if the value of the use of the thing ~~misused [misapplied]~~ is less than \$20;

(2) a Class B misdemeanor if the value of the use of the thing ~~misused [misapplied]~~ is ~~[\$20 or more but]~~ less than \$500 ~~[\$200]~~;

(3) a Class A misdemeanor if the value of the use of the thing ~~misused [misapplied]~~ is \$500 ~~[\$200]~~ or more but less than \$1,500 ~~[\$750]~~;

(4) a state jail felony ~~[of the third degree]~~ if the value of the use of the thing ~~misused [misapplied]~~ is \$1,500 ~~[\$750]~~ or more but less than \$20,000;

(5) a felony of the third degree if the value of the use of the thing ~~misused~~ is \$20,000 or more but less than \$100,000; ~~[and]~~

(6) ~~[(5)]~~ a felony of the second degree if the value of the use of the thing ~~misused [misapplied]~~ is \$100,000 ~~[\$20,000]~~ or more but less than \$200,000; or

(7) a felony of the first degree if the value of the use of the thing ~~misused~~ is \$200,000 or more.

(d) ~~A discount or award given for travel, such as frequent flyer miles, rental car or hotel discounts, or food coupons, are not things of value belonging to the government for purposes of this section due to the administrative difficulty and cost involved in recapturing the discount or award for a governmental entity.~~

Sec. 39.03 ~~[39.02]~~. OFFICIAL OPPRESSION. (a) A public servant acting under color of his office or employment commits an offense if he:

(1) intentionally subjects another to mistreatment or to arrest, detention, search, seizure, dispossession, assessment, or lien that he knows is unlawful;

(2) intentionally denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing his conduct is unlawful; or

(3) intentionally subjects another to sexual harassment.

(b) For purposes of this section, a public servant acts under color of his office or employment if he acts or purports to act in an official capacity or takes advantage of such actual or purported capacity.

(c) In this section, "sexual harassment" means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, submission to which is made a term or condition of a person's exercise or enjoyment of any right, privilege, power, or immunity, either explicitly or implicitly.

(d) An offense under this section is a Class A misdemeanor.

Sec. 39.04 ~~[39.02+]~~. VIOLATIONS OF THE CIVIL RIGHTS OF PERSON IN CUSTODY ~~[A PRISONER]~~. (a) ~~An official or employee of [A jailer or guard employed at a municipal or county jail, by the Texas~~

~~Department of Corrections, or by~~ a correctional facility ~~[authorized by Article 5115d, Revised Statutes, or Article 6166g-2, Revised Statutes,]~~ or a peace officer commits an offense if he[

~~[(1)] intentionally [subjects a person in custody to bodily injury knowing his conduct is unlawful;~~

~~[(2)] willfully] denies or impedes a person in custody in the exercise or enjoyment of any right, privilege, or immunity knowing his conduct is unlawful.~~

(b) An offense under this section is a Class A misdemeanor ~~[felony of the third degree. An offense under this section is a felony of the second degree if serious bodily injury occurs or a felony of the first degree if death occurs].~~

(c) This section shall not preclude prosecution for any other offense set out in this code.

(d) The Attorney General of Texas shall have concurrent jurisdiction with law enforcement agencies to investigate violations of this statute involving serious bodily injury or death.

(e) In this section, "custody" means the detention, arrest, or confinement of a person.

Sec. 39.05 [39.022]. FAILURE TO REPORT DEATH OF PRISONER.

(a) A person commits an offense if the person is required to conduct an investigation and file a report by Article 49.18 [49.08(b)], Code of Criminal Procedure, ~~[1965,]~~ and the person fails to investigate the death, fails to file the report as required, or fails to include in a filed report facts known or discovered in the investigation.

(b) An offense under this section is a Class B misdemeanor.

Sec. 39.06 [39.03]. MISUSE OF OFFICIAL INFORMATION. (a) A public servant commits an offense if, in reliance on information to which he has access by virtue of his office or employment ~~[in his official capacity]~~ and that [which] has not been made public, he:

(1) acquires or aids another to acquire a pecuniary interest in any property, transaction, or enterprise that may be affected by the information; or

(2) speculates or aids another to speculate on the basis of the information.

(b) A public servant ~~[who is a judge, justice, intern, participant in a court-approved history project, or employee of an appellate court]~~ commits an offense if with intent to obtain a benefit or with intent to harm or defraud another, he discloses or uses information for a non-governmental purpose that:

(1) he has access to by means of his office or employment; and

(2) has not been made public [he intentionally or knowingly reveals the result or content of a proposed or actual appellate judicial decision or opinion to any person other than a judge, justice, or employee, intern, or participant in a court-approved history project under suitable supervision of the same appellate court prior to its release as a public record or announcement to all parties of interest on an equal basis].

(c) A person commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he ~~[intentionally or knowingly]~~ solicits or receives from a public servant information that:

~~(1) the public servant has access to by means of his office or employment; and~~

~~(2) has not been made public [the result or content of a proposed or actual appellate judicial decision or opinion prior to the rendition of judgment, when the person knows that the content or result of such order or opinion has not been disclosed to the opposing party or parties].~~

~~(d) In this section, "information that has not been made public" means any information to which the public does not generally have access, and that is prohibited from disclosure under Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).~~

~~(e) An offense under this section is a felony of the third degree.~~

TITLE 9. OFFENSES AGAINST PUBLIC ORDER AND DECENCY  
CHAPTER 42. DISORDERLY CONDUCT AND RELATED OFFENSES

Sec. 42.01. DISORDERLY CONDUCT. (a) A person commits an offense if he intentionally or knowingly:

(1) uses abusive, indecent, profane, or vulgar language in a public place, and the language by its very utterance tends to incite an immediate breach of the peace;

(2) makes an offensive gesture or display in a public place, and the gesture or display tends to incite an immediate breach of the peace;

(3) creates, by chemical means, a noxious and unreasonable odor in a public place;

(4) abuses or threatens a person in a public place in an obviously offensive manner;

(5) makes unreasonable noise in a public place other than a sport shooting range, as defined by Section 250.001, Local Government Code, or in or near a private residence that he has no right to occupy;

(6) fights with another in a public place;

(7) enters on the property of another and for a lewd or unlawful purpose looks into a dwelling on the property through any window or other opening in the dwelling;

(8) while on the premises of a hotel or comparable establishment, for a lewd or unlawful purpose looks into a guest room not his own through a window or other opening in the room;

(9) discharges a firearm in a public place other than a public road or a sport shooting range, as defined by Section 250.001, Local Government Code;

(10) displays a firearm or other deadly weapon in a public place in a manner calculated to alarm;

(11) discharges a firearm on or across a public road; or

(12) exposes his anus or genitals in a public place and is reckless about whether another may be present who will be offended or alarmed by his act.

(b) It is a defense to prosecution under Subsection (a)(4) ~~[of this section]~~ that the actor had significant provocation for his abusive or threatening conduct.

(c) For purposes of this section, an act is deemed to occur in a public place or near a private residence if it produces its offensive or proscribed consequences in the public place or near a private residence.

(d) An offense under this section is a Class C misdemeanor unless committed under Subsection (a)(9) or (a)(10) ~~[of this section]~~, in which event it is a Class B misdemeanor~~;~~ ~~and further provide that a person who violates Subsection (a)(11) is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than \$25 nor more than \$200; on a second conviction is punishable by a fine of not less than \$200 nor more than \$500; and on a third or subsequent conviction is punishable by a fine of \$500].~~

Sec. 42.02. RIOT. (a) For the purpose of this section, "riot" means the assemblage of seven or more persons resulting in conduct which:

(1) creates an immediate danger of damage to property or injury to persons;

(2) substantially obstructs law enforcement or other governmental functions or services; or

(3) by force, threat of force, or physical action deprives any person of a legal right or disturbs any person in the enjoyment of a legal right.

(b) A person commits an offense if he knowingly participates in a riot.

(c) It is a defense to prosecution under this section that the assembly was at first lawful and when one of those assembled manifested an intent to engage in conduct enumerated in Subsection (a) ~~[of this section]~~, the actor retired from the assembly.

(d) It is no defense to prosecution under this section that another who was a party to the riot has been acquitted, has not been arrested, prosecuted, or convicted, has been convicted of a different offense or of a different type or class of offense, or is immune from prosecution.

(e) Except as provided in Subsection (f) ~~[of this section]~~, an offense under this section is a Class B misdemeanor.

(f) An offense under this section is an offense of the same classification as any offense of a higher grade committed by anyone engaged in the riot if the offense was:

(1) in the furtherance of the purpose of the assembly; or

(2) an offense which should have been anticipated as a result of the assembly.

Sec. 42.03. OBSTRUCTING HIGHWAY OR OTHER PASSAGEWAY.

(a) A person commits an offense if, without legal privilege or authority, he intentionally, knowingly, or recklessly:

(1) obstructs a highway, street, sidewalk, railway, waterway, elevator, aisle, hallway, entrance, or exit to which the public or a substantial group of the public has access, or any other place used for the passage of persons, vehicles, or conveyances, regardless of the means of creating the obstruction and whether the obstruction arises from his acts alone or from his acts and the acts of others; or

(2) disobeys a reasonable request or order to move issued by a person the actor knows to be or is informed is a peace officer, a fireman, or a person with authority to control the use of the premises:

(A) to prevent obstruction of a highway or any of those areas mentioned in Subdivision (1) ~~[of this subsection]~~; or

(B) to maintain public safety by dispersing those gathered in dangerous proximity to a fire, riot, or other hazard.

(b) For purposes of this section, "obstruct" means to render impassable or to render passage unreasonably inconvenient or hazardous.

(c) An offense under this section is a Class B misdemeanor.

**Sec. 42.04. DEFENSE WHEN CONDUCT CONSISTS OF SPEECH OR OTHER EXPRESSION.** (a) If conduct that would otherwise violate Section 42.01(a)(5) (Unreasonable Noise) or 42.03 (Obstructing Passageway) ~~[of this code]~~ consists of speech or other communication, of gathering with others to hear or observe such speech or communication, or of gathering with others to picket or otherwise express in a nonviolent manner a position on social, economic, political, or religious questions, the actor must be ordered to move, disperse, or otherwise remedy the violation prior to his arrest if he has not yet intentionally harmed the interests of others which those sections seek to protect.

(b) The order required by this section may be given by a peace officer, a fireman, a person with authority to control the use of the premises, or any person directly affected by the violation.

(c) It is a defense to prosecution under Section 42.01(a)(5) or 42.03 ~~[of this code]~~:

(1) that in circumstances in which this section requires an order no order was given;

(2) that an order, if given, was manifestly unreasonable in scope; or

(3) that an order, if given, was promptly obeyed.

**Sec. 42.05. DISRUPTING MEETING OR PROCESSION.** (a) A person commits an offense if, with intent to prevent or disrupt a lawful meeting, procession, or gathering, he obstructs or interferes with the meeting, procession, or gathering by physical action or verbal utterance.

(b) An offense under this section is a Class B misdemeanor.

**Sec. 42.06. FALSE ALARM OR REPORT.** (a) A person commits an offense if he knowingly initiates, communicates or circulates a report of a present, past, or future bombing, fire, offense, or other emergency that he knows is false or baseless and that would ordinarily:

(1) cause action by an official or volunteer agency organized to deal with emergencies;

(2) place a person in fear of imminent serious bodily injury; or

(3) prevent or interrupt the occupation of a building, room, place of assembly, place to which the public has access, or aircraft, automobile, or other mode of conveyance.

(b) An offense under this section is a Class A misdemeanor unless the false report is of an emergency involving a public primary or secondary school, public communications, public transportation, public water, gas, or power supply or other public service, in which event the offense is a state jail felony ~~[of the third degree]~~.

**Sec. 42.061. SILENT OR ABUSIVE CALLS TO 9-1-1 SERVICE.** (a) In this section "9-1-1 service" and "public safety answering point" or "PSAP" have the meanings assigned by Section 772.001, Health and Safety Code.



(b) A person commits an offense if the person makes a telephone call to 9-1-1 when there is not an emergency and knowingly or intentionally:

(1) remains silent; or

(2) makes abusive or harassing statements to a PSAP employee.

(c) A person commits an offense if the person knowingly permits a telephone under the person's control to be used by another person in a manner described in Subsection (b) ~~[of this section]~~.

(d) An offense under this section is a Class B misdemeanor~~[-unless it is shown on the trial of a defendant that the defendant has been previously convicted under this section, in which event the offense is a Class A misdemeanor]~~.

Sec. 42.07. HARASSMENT. (a) A person commits an offense if, with intent to harass, annoy, alarm, abuse, torment, or embarrass another, he:

(1) initiates communication by telephone or in writing and in the course of the communication makes a comment, request, suggestion, or proposal that is obscene;

(2) threatens, by telephone or in writing, in a manner reasonably likely to alarm the person receiving the threat, to inflict bodily injury on the person or to commit a felony against the person, a member of his family, or his property;

(3) conveys, in a manner reasonably likely to alarm the person receiving the report, a false report, which is known by the conveyor to be false, that another person has suffered death or serious bodily injury;

(4) causes the telephone of another to ring repeatedly or makes repeated telephone communications anonymously or in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another;

(5) makes a telephone call and intentionally fails to hang up or disengage the connection;

(6) knowingly permits a telephone under his control to be used by a person to commit an offense under this section; or

(7)(A) on more than one occasion engages in conduct directed specifically toward the other person, including following that person, that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass that person;

(B) on at least one of those occasions by acts or words threatens to inflict bodily injury on that person or to commit an offense against that person, a member of that person's family, or that person's property; and

(C) on at least one of those occasions engages in the conduct after the person toward whom the conduct is specifically directed has reported to a law enforcement agency the conduct described by this subdivision.

(b) For purposes of Subsection (a)(1) ~~[of this section]~~, "obscene" means containing a patently offensive description of or a solicitation to commit an ultimate sex act, including sexual intercourse, masturbation, cunnilingus, fellatio, or anilingus, or a description of an excretory function. In this section, "family" has the meaning assigned by Section 71.01, Family Code.

(c) An offense under Subsections (a)(1)-(a)(6) ~~[of this section]~~ is a Class B misdemeanor.

(d) An offense under Subsection (a)(7) is a Class A misdemeanor, except that the offense is a felony of the third degree if the actor has previously been convicted under Subsection (a)(7) ~~[of this section]~~.

(e) It is an affirmative defense to prosecution under Subsection (a)(7) ~~[of this section]~~ that the actor was engaged in conduct that consisted of activity in support of constitutionally or statutorily protected rights.

~~Sec. 42.08. [PUBLIC INTOXICATION. (a) An individual commits an offense if the individual appears in a public place under the influence of alcohol or any other substance, to the degree that the individual may endanger himself or another.~~

~~[(b) In lieu of arresting an individual who commits an offense under Subsection (a) of this section, a peace officer may release an individual if:~~

~~[(1) the officer believes detention in a penal facility is unnecessary for the protection of the individual or others; and~~

~~[(2) the individual:~~

~~[(A) is released to the care of an adult who agrees to assume responsibility for the individual; or~~

~~[(B) verbally consents to voluntary treatment for chemical dependency in a program in a treatment facility licensed and approved by the Texas Commission on Alcohol and Drug Abuse, and the program admits the individual for treatment.~~

~~[(c) A magistrate may release from custody an individual arrested under this section if the magistrate determines the individual meets the conditions required for release in lieu of arrest under Subsection (b) of this section.~~

~~[(d) The release of an individual under Subsection (b) or (c) of this section to an alcohol or drug treatment program may not be considered by a peace officer or magistrate in determining whether the individual should be released to such a program for a subsequent incident or arrest under this section.~~

~~[(e) A peace officer and the agency or political subdivision that employs the peace officer may not be held liable for damage to persons or property that results from the actions of an individual released under Subsection (b) or (c) of this section.~~

~~[(f) It is a defense to prosecution under this section that the alcohol or other substance was administered for therapeutic purposes and as a part of the individual's professional medical treatment by a licensed physician.~~

~~[(g) An offense under this section is not a lesser included offense of an offense under Article 67011-1, Revised Statutes.~~

~~[(h) An offense under this section is a Class C misdemeanor.~~

~~[Sec. 42.09. DESECRATION OF VENERATED OBJECT. (a) A person commits an offense if he intentionally or knowingly desecrates:~~

~~[(1) a public monument; or~~

~~[(2) a place of worship or burial.~~

~~[(b) For purposes of this section, "desecrate" means deface, damage, or otherwise physically mistreat in a way that the actor knows will~~

~~seriously offend one or more persons likely to observe or discover his action.~~

~~[(c) Except as provided by Subsection (d) of this section, an offense under this section is a Class A misdemeanor.~~

~~[(d) An offense under this section is a felony of the third degree if a place of worship or burial is desecrated.~~

~~[Sec. 42.10.] ABUSE OF CORPSE.~~ (a) A person commits an offense if, not authorized by law, he intentionally or knowingly:

- (1) disinters, disturbs, removes, dissects, in whole or in part, carries away, or treats in a seriously offensive manner a human corpse;
- (2) conceals a human corpse knowing it to be illegally disinterred;
- (3) sells or buys a human corpse or in any way traffics in a human corpse; or
- (4) transmits or conveys, or procures to be transmitted or conveyed, a human corpse to a place outside the state.

(b) An offense under this section is a Class A misdemeanor.

~~Sec. 42.09 [42.11].~~ CRUELTY TO ANIMALS. (a) A person commits an offense if he intentionally or knowingly:

- (1) tortures or seriously overworks an animal;
- (2) fails unreasonably to provide necessary food, care, or shelter for an animal in his custody;
- (3) abandons unreasonably an animal in his custody;
- (4) transports or confines an animal in a cruel manner;
- (5) kills, injures, or administers poison to an animal, other than cattle, horses, sheep, swine, or goats, belonging to another without legal authority or the owner's effective consent;
- (6) causes one animal to fight with another; or
- (7) uses a live animal as a lure in dog race training or in dog coursing on a racetrack.

(b) It is a defense to prosecution under this section that the actor was engaged in bona fide experimentation for scientific research.

(c) For purposes of this section, "animal" means a domesticated living creature and wild living creature previously captured. "Animal" does not include an uncaptured wild creature or a wild creature whose capture was accomplished by conduct at issue under this section.

(d) An offense under this section is a Class A misdemeanor.

(e) It is a defense to prosecution under Subsection (a)(5) ~~[of this section]~~ that the animal was discovered on the person's property in the act of or immediately after injuring or killing the person's goats, sheep, cattle, horses, swine, or poultry and that the person killed or injured the animal at the time of this discovery.

~~Sec. 42.10 [42.11].~~ DOG FIGHTING. (a) A person commits an offense if he intentionally or knowingly:

- (1) causes a dog to fight with another dog;
- (2) for a pecuniary benefit causes a dog to fight with another dog;
- (3) participates in the earnings of or operates a facility used for dog fighting;
- (4) uses or permits another to use any real estate, building, room, tent, arena, or other property for dog fighting;

(5) owns or trains a dog with the intent that the dog be used in an exhibition of dog fighting; or

(6) attends as a spectator an exhibition of dog fighting.

(b) In this section, "dog fighting" means any situation in which one dog attacks or fights with another dog.

(c) A party to an offense under Subdivision (2), (3), or (4) of Subsection (a) ~~[of this section]~~ may be required to furnish evidence or testify about the offense but may not be prosecuted for the offense about which he is required to furnish evidence or testify.

(d) A conviction under Subdivision (2), (3), or (4) of Subsection (a) ~~[of this section]~~ may be had upon the uncorroborated testimony of a party to the offense.

(e) It is a defense to prosecution under Subdivision (1) or (2) of Subsection (a) ~~[of this section]~~ that the actor caused a dog to fight with another dog to protect livestock, other property, or a person from the other dog, and for no other purpose.

(f) An offense under Subdivision (1) or (5) of Subsection (a) ~~[of this section]~~ is a Class A misdemeanor. An offense under Subdivision (2), (3), or (4) of Subsection (a) ~~[of this section]~~ is a state jail felony ~~[of the third degree]~~. An offense under Subdivision (6) of Subsection (a) ~~[of this section]~~ is a Class C misdemeanor.

~~[Sec. 42.13. Interference with Emergency Communication. (a) A person commits an offense if the person intentionally, knowingly, recklessly, or with criminal negligence interrupts, disrupts, impedes, or otherwise interferes with the transmission of a communication over a citizen's band radio channel, the purpose of which communication is to inform or inquire about an emergency.~~

~~(b) In this section, "emergency" means a condition or circumstance in which an individual is or is reasonably believed by the person transmitting the communication to be in imminent danger of serious bodily injury or in which property is or is reasonably believed by the person transmitting the communication to be in imminent danger of damage or destruction.~~

~~(c) An offense under this section is a Class B misdemeanor unless, as a result of the commission of the offense, serious bodily injury or property loss in excess of \$1,000 occurs, in which event the offense is a felony of the third degree.]~~

Sec. ~~42.11~~ [42.14]. DESTRUCTION OF FLAG. (a) A person commits an offense if the person intentionally or knowingly damages, defaces, mutilates, or burns the flag of the United States or the State of Texas.

(b) In this section, "flag" means an emblem, banner, or other standard or a copy of an emblem, standard, or banner that is an official or commonly recognized depiction of the flag of the United States or of this state and is capable of being flown from a staff of any character or size. The term does not include a representation of a flag on a written or printed document, a periodical, stationery, a painting or photograph, or an article of clothing or jewelry.

(c) It is an exception to the application of this section that the act that would otherwise constitute an offense is done in conformity with statutes

of the United States or of this state relating to the proper disposal of damaged flags.

(d) An offense under this section is a Class A misdemeanor.

Sec. 42.12. Discharging a Firearm From a Vehicle. (a) A person commits an offense if the person:

(1) knowingly discharges a firearm from a vehicle or uses a vehicle in immediate flight following a knowing discharge of the firearm and the person is reckless about whether another may be injured by the discharge of the firearm; or

(2) intentionally or knowingly threatens another with a firearm and the person:

(A) makes the threat while in a vehicle; or

(B) uses a vehicle in immediate flight following the threat.

(b) Except as provided by Subsection (c) of this section, an offense under this section is a state jail felony.

(c) An offense under this section is a felony of the third degree if it is shown at the trial of the offense that the actor's conduct caused bodily injury to another.

(d) It is a defense to prosecution under Subsection (a)(1) of this section that the person was lawfully engaged in a sporting activity at the time the person discharged the firearm.

(e) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the person may be prosecuted under either section.

(f) In this section, "vehicle" has the meaning assigned by Section 30.01 of this code.

#### CHAPTER 43. PUBLIC INDECENCY

##### SUBCHAPTER A. PROSTITUTION

Sec. 43.01. DEFINITIONS. In this subchapter:

(1) "Deviate sexual intercourse" means any contact between the genitals of one person and the mouth or anus of another person.

(2) "Prostitution" means the offense defined in Section 43.02 ~~[of this code]~~.

(3) "Sexual contact" means any touching of the anus, breast, or any part of the genitals of another person with intent to arouse or gratify the sexual desire of any person.

(4) "Sexual conduct" includes deviate sexual intercourse, sexual contact, and sexual intercourse.

(5) "Sexual intercourse" means any penetration of the female sex organ by the male sex organ.

Sec. 43.02. PROSTITUTION. (a) A person commits an offense if he knowingly:

(1) offers to engage, agrees to engage, or engages in sexual conduct for a fee; or

(2) solicits another in a public place to engage with him in sexual conduct for hire.

(b) An offense is established under Subsection (a)(1) ~~[of this section]~~ whether the actor is to receive or pay a fee. An offense is established under Subsection (a)(2) ~~[of this section]~~ whether the actor solicits a person to hire him or offers to hire the person solicited.

(c) An offense under this section is a Class B misdemeanor, unless the actor has been convicted previously under this section, in which event it is a Class A misdemeanor.

Sec. 43.03. PROMOTION OF PROSTITUTION. (a) A person commits an offense if, acting other than as a prostitute receiving compensation for personally rendered prostitution services, he or she knowingly:

(1) receives money or other property pursuant to an agreement to participate in the proceeds of prostitution; or

(2) solicits another to engage in sexual conduct with another person for compensation.

(b) An offense under this section is a Class A misdemeanor.

Sec. 43.04. AGGRAVATED PROMOTION OF PROSTITUTION. (a) A person commits an offense if he knowingly owns, invests in, finances, controls, supervises, or manages a prostitution enterprise that uses two or more prostitutes.

(b) An offense under this section is a felony of the third degree.

Sec. 43.05. COMPELLING PROSTITUTION. (a) A person commits an offense if he knowingly:

(1) causes another by force, threat, or fraud to commit prostitution; or

(2) causes by any means a person younger than 17 years to commit prostitution.

(b) An offense under this section is a felony of the second degree.

Sec. 43.06. ACCOMPLICE WITNESS: TESTIMONY AND IMMUNITY. (a) A party to an offense under this subchapter may be required to furnish evidence or testify about the offense.

(b) A party to an offense under this subchapter may not be prosecuted for any offense about which he is required to furnish evidence or testify, and the evidence and testimony may not be used against the party in any adjudicatory proceeding except a prosecution for aggravated perjury.

(c) For purposes of this section, "adjudicatory proceeding" means a proceeding before a court or any other agency of government in which the legal rights, powers, duties, or privileges of specified parties are determined.

(d) A conviction under this subchapter may be had upon the uncorroborated testimony of a party to the offense.

[Sections 43.07-43.20 reserved for expansion]

#### SUBCHAPTER B. OBSCENITY

Sec. 43.21. DEFINITIONS. (a) In this subchapter:

(1) "Obscene" means material or a performance that:

(A) the average person, applying contemporary community standards, would find that taken as a whole appeals to the prurient interest in sex;

(B) depicts or describes:

(i) patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse, sodomy, and sexual bestiality; or

(ii) patently offensive representations or descriptions of masturbation, excretory functions, sadism, masochism, lewd exhibition of the genitals, the male or female genitals in a state of sexual stimulation or arousal, covered male genitals in a discernibly turgid state or a device designed and marketed as useful primarily for stimulation of the human genital organs; and

(C) taken as a whole, lacks serious literary, artistic, political, and scientific value.

(2) "Material" means anything tangible that is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound, or in any other manner, but does not include an actual three dimensional obscene device.

(3) "Performance" means a play, motion picture, dance, or other exhibition performed before an audience.

(4) "Patently offensive" means so offensive on its face as to affront current community standards of decency.

(5) "Promote" means to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do the same.

(6) "Wholesale promote" means to manufacture, issue, sell, provide, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, or to offer or agree to do the same for purpose of resale.

(7) "Obscene device" means a device including a dildo or artificial vagina, designed or marketed as useful primarily for the stimulation of human genital organs.

(b) If any of the depictions or descriptions of sexual conduct described in this section are declared by a court of competent jurisdiction to be unlawfully included herein, this declaration shall not invalidate this section as to other patently offensive sexual conduct included herein.

Sec. 43.22. OBSCENE DISPLAY OR DISTRIBUTION. (a) A person commits an offense if he intentionally or knowingly displays or distributes an obscene photograph, drawing, or similar visual representation or other obscene material and is reckless about whether a person is present who will be offended or alarmed by the display or distribution.

(b) An offense under this section is a Class C misdemeanor.

Sec. 43.23. OBSCENITY. (a) A person commits an offense if, knowing its content and character, he wholesale promotes or possesses with intent to wholesale promote any obscene material or obscene device.

(b) An offense under Subsection (a) [~~of this section~~] is a state jail felony [~~of the third degree~~].

(c) A person commits an offense if, knowing its content and character, he:

(1) promotes or possesses with intent to promote any obscene material or obscene device; or

(2) produces, presents, or directs an obscene performance or participates in a portion thereof that is obscene or that contributes to its obscenity.

(d) An offense under Subsection (c) ~~[of this section]~~ is a Class A misdemeanor.

(e) A person who promotes or wholesale promotes obscene material or an obscene device or possesses the same with intent to promote or wholesale promote it in the course of his business is presumed to do so with knowledge of its content and character.

(f) A person who possesses six or more obscene devices or identical or similar obscene articles is presumed to possess them with intent to promote the same.

(g) ~~It is an affirmative defense to prosecution under this section that the [This section does not apply to a] person who possesses or promotes [distributes obscene] material or a device proscribed [obscene devices or participates in conduct otherwise proscribed] by this section does so for a bona fide educational, psychological, medical, psychiatric, judicial, legislative, [when the possession, participation,] or [conduct occurs in the course of] law enforcement purpose [activities].~~

Sec. 43.24. SALE, DISTRIBUTION, OR DISPLAY OF HARMFUL MATERIAL TO MINOR. (a) For purposes of this section:

(1) "Minor" means an individual younger than 17 years.

(2) "Harmful material" means material whose dominant theme taken as a whole:

(A) appeals to the prurient interest of a minor, in sex, nudity, or excretion;

(B) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors; and

(C) is utterly without redeeming social value for minors.

(b) A person commits an offense if, knowing that the material is harmful:

(1) and knowing the person is a minor, he sells, distributes, exhibits, or possesses for sale, distribution, or exhibition to a minor harmful material;

(2) he displays harmful material and is reckless about whether a minor is present who will be offended or alarmed by the display; or

(3) he hires, employs, or uses a minor to do or accomplish or assist in doing or accomplishing any of the acts prohibited in Subsection (b)(1) or (b)(2) ~~[of this section]~~.

(c) It is a defense to prosecution under this section that:

(1) the sale, distribution, or exhibition was by a person having scientific, educational, governmental, or other similar justification; or

(2) the sale, distribution, or exhibition was to a minor who was accompanied by a consenting parent, guardian, or spouse.

(d) An offense under this section is a Class A misdemeanor unless it is committed under Subsection (b)(3) ~~[of this section]~~ in which event it is a felony of the third degree.

Sec. 43.25. SEXUAL PERFORMANCE BY A CHILD. (a) In this section:

(1) "Sexual performance" means any performance or part thereof that includes sexual conduct by a child younger than 17 years of age.



(2) "Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sado-masochistic abuse, or lewd exhibition of the genitals.

(3) "Performance" means any play, motion picture, photograph, dance, or other visual representation that can be exhibited before an audience of one or more persons.

(4) "Produce" with respect to a sexual performance includes any conduct that directly contributes to the creation or manufacture of the sexual performance.

(5) ~~["Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise or to offer or agree to do any of the above.]~~

~~[(6)]~~ "Simulated" means the explicit depiction of sexual conduct that creates the appearance of actual sexual conduct and during which a person engaging in the conduct exhibits any uncovered portion of the breasts, genitals, or buttocks.

~~(6) [(7)]~~ "Deviate sexual intercourse" has the meaning defined by Section 43.01 ~~[of this code].~~

~~[(8)]~~ ~~"Sado-masochistic abuse" has the meaning defined by Section 43.24 of this code.]~~

(b) A person commits an offense if, knowing the character and content thereof, he employs, authorizes, or induces a child younger than 17 years of age to engage in sexual conduct or a sexual performance. A parent or legal guardian or custodian of a child younger than 17 years of age commits an offense if he consents to the participation by the child in a sexual performance.

(c) An offense under Subsection (b) ~~[of this section]~~ is a felony of the second degree.

(d) A person commits an offense if, knowing the character and content of the material, he produces, directs, or promotes a performance that includes sexual conduct by a child younger than 17 years of age.

(e) An offense under Subsection (d) ~~[of this section]~~ is a felony of the third degree.

(f) It is an affirmative defense to a prosecution under this section that:

(1) the defendant, in good faith, reasonably believed that the child who engaged in the sexual conduct was 17 years of age or older;

(2) the defendant was the spouse of the child at the time of the offense;

(3) the conduct was for a bona fide educational, medical, psychological, psychiatric, judicial, law enforcement, or legislative purpose; or

(4) the defendant is not more than two years older than the child.

(g) When it becomes necessary for the purposes of this section or Section 43.26 ~~[of this code]~~ to determine whether a child who participated in sexual conduct was younger than 17 years of age, the court or jury may make this determination by any of the following methods:

(1) personal inspection of the child;

(2) inspection of the photograph or motion picture that shows the child engaging in the sexual performance;

(3) oral testimony by a witness to the sexual performance as to the age of the child based on the child's appearance at the time;

(4) expert medical testimony based on the appearance of the child engaging in the sexual performance; or

(5) any other method authorized by law or by the rules of evidence at common law.

Sec. 43.251. EMPLOYMENT HARMFUL TO CHILDREN [MINORS].

(a) In this section:

(1) "Child" means a person younger than 17 years of age.

(2) "Massage" means the rubbing, kneading, tapping, compression, vibration, application of friction, or percussion of the human body or parts of it by hand or with an instrument or apparatus.

(3) "Massage establishment" means a commercial activity the primary business of which is the rendering of massage. The term does not include the businesses of licensed physical therapists, licensed athletic trainers, licensed cosmetologists, or licensed barbers engaged in performing functions authorized by the license held.

(4) "Nude" means a child who is:

(A) entirely unclothed; or

(B) clothed in a manner that leaves uncovered or visible through less than fully opaque clothing any portion of the breasts below the top of the areola of the breasts, if the child is female, or any portion of the genitals or buttocks.

(5) "Sexually oriented commercial activity" means a massage establishment, nude studio, modeling studio, love parlor, or other similar commercial enterprise the primary business of which is the offering of a service that is intended to provide sexual stimulation or sexual gratification to the customer.

(6) "Topless" means a female child clothed in a manner that leaves uncovered or visible through less than fully opaque clothing any portion of her breasts below the top of the areola.

(b) A person commits an offense if the person employs, authorizes, or induces a child to work:

(1) in a sexually oriented commercial activity; or

(2) in any place of business permitting, requesting, or requiring a child to work nude or topless.

(c) An offense under this section is a Class A misdemeanor.

Sec. 43.26. POSSESSION OR PROMOTION OF CHILD PORNOGRAPHY. (a) A person commits an offense if:

(1) the person knowingly or intentionally possesses material containing a film image that visually depicts a child younger than 17 years of age at the time the film image of the child was made who is engaging in sexual conduct; and

(2) the person knows that the material depicts the child as described by Subdivision (1) [~~of this subsection~~].

(b) In this section:

(1) "Film image" includes a photograph, slide, negative, film, or videotape, or a reproduction of any of these.

(2) "Sexual conduct" has the meaning assigned by Section 43.25 ~~[of this code]~~.

~~[(3) "Promote" has the meaning assigned by Section 43.25 of this code:]~~

(c) The affirmative defenses provided by Section 43.25(f) ~~[of this code]~~ also apply to a prosecution under this section.

(d) An offense under this section is a felony of the third degree.

(e) A person commits an offense if:

(1) the person knowingly or intentionally promotes or possesses with intent to promote material described by Subsection (a)(1) ~~[of this section]~~; and

(2) the person knows that the material depicts the child as described by Subsection (a)(1) ~~[of this section]~~.

(f) A person who possesses six or more identical film images depicting a child as described by Subsection (a)(1) ~~[of this section]~~ is presumed to possess the film images with the intent to promote the material.

(g) An offense under Subsection (e) ~~[of this section]~~ is a felony of the third degree.

TITLE 10. OFFENSES AGAINST PUBLIC HEALTH,  
SAFETY, AND MORALS  
CHAPTER 46. WEAPONS

Sec. 46.01. ~~[CHAPTER]~~ DEFINITIONS. In this chapter:

(1) "Club" means an instrument that is specially designed, made, or adapted for the purpose of inflicting serious bodily injury or death by striking a person with the instrument, and includes but is not limited to the following:

- (A) blackjack;
- (B) nightstick;
- (C) mace;
- (D) tomahawk.

(2) "Explosive weapon" means any explosive or incendiary bomb, grenade, rocket, or mine, that is designed, made, or adapted for the purpose of inflicting serious bodily injury, death, or substantial property damage, or for the principal purpose of causing such a loud report as to cause undue public alarm or terror, and includes a device designed, made, or adapted for delivery or shooting an explosive weapon.

(3) "Firearm" means any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use. Firearm does not include antique or curio firearms that were manufactured prior to 1899 and that may have, as an integral part, a folding knife blade or other characteristics of weapons made illegal by this chapter.

(4) "Firearm silencer" means any device designed, made, or adapted to muffle the report of a firearm.

(5) "Handgun" means any firearm that is designed, made, or adapted to be fired with one hand.

- (6) "Illegal knife" means a:
- (A) knife with a blade over five and one-half inches;
  - (B) [a] hand instrument designed to cut or stab another by being thrown;
  - (C) dagger, including but not limited to a dirk, stiletto, and poniard;
  - (D) bowie knife;
  - (E) sword; or
  - (F) spear.
- (7) "Knife" means any bladed hand instrument that is capable of inflicting serious bodily injury or death by cutting or stabbing a person with the instrument.
- (8) "Knuckles" means any instrument that consists of finger rings or guards made of a hard substance and that is designed, made, or adapted for the purpose of inflicting serious bodily injury or death by striking a person with a fist enclosed in the knuckles.
- (9) "Machine gun" means any firearm that is capable of shooting more than two shots automatically, without manual reloading, by a single function of the trigger.
- (10) "Short-barrel firearm" means a rifle with a barrel length of less than 16 inches or a shotgun with a barrel length of less than 18 inches, or any weapon made from a shotgun or rifle if, as altered, it has an overall length of less than 26 inches.
- (11) "Switchblade knife" means any knife that has a blade that folds, closes, or retracts into the handle or sheath, and that:
- (A) opens automatically by pressure applied to a button or other device located on the handle; or
  - (B) opens or releases a blade from the handle or sheath by the force of gravity or by the application of centrifugal force.
- (12) "Armor-piercing ammunition" means handgun ammunition that is designed primarily for the purpose of penetrating metal or body armor and to be used principally in pistols and revolvers.
- (13) "Hoax bomb" means a device that:
- (A) reasonably appears to be an explosive or incendiary device; or
  - (B) by its design causes alarm or reaction of any type by an official of a public safety agency or a volunteer agency organized to deal with emergencies.
- (14) "Chemical dispensing device" means a device, other than a small chemical dispenser sold commercially for personal protection, that is designed, made, or adapted for the purpose of dispensing a substance capable of causing an adverse psychological or physiological effect on a human being.
- (15) "Racetrack" has the meaning assigned that term by the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes).
- (16) "Zip gun" means a device or combination of devices that was not originally a firearm and is adapted to expel a projectile through a smooth-bore or rifled-bore barrel by using the energy generated by an explosion or burning substance.

Sec. 46.02. UNLAWFUL CARRYING WEAPONS. (a) A person commits an offense if he intentionally, knowingly, or recklessly carries on or about his person a handgun, illegal knife, or club.

~~(b) It is a defense to prosecution under this section that the actor was, at the time of the commission of the offense [Except as provided in Subsection (c), an offense under this section is a Class A misdemeanor.~~

~~[(c) An offense under this section is a felony of the third degree if it occurs on any premises licensed or issued a permit by this state for the sale or service of alcoholic beverages.~~

~~[Sec. 46.03. NON-APPLICABLE. (a) The provisions of Section 46.02 of this code do not apply to a person]:~~

(1) in the actual discharge of his official duties as a member of the armed forces or state military forces as defined by Section 431.001, Government Code, or as a guard employed by a penal institution;

(2) on his own premises or premises under his control unless he is an employee or agent of the owner of the premises and his primary responsibility is to act in the capacity of a security guard to protect persons or property, in which event he must comply with Subdivision (5) ~~[of this subsection];~~

(3) traveling;

(4) engaging in lawful hunting, fishing, or other sporting activity if the weapon is a type commonly used in the activity;

(5) a person who holds a security officer commission issued by the Texas Board of Private Investigators and Private Security Agencies, if:

(A) he is engaged in the performance of his duties as a security officer or traveling to and from his place of assignment;

(B) he is wearing a distinctive uniform; and

(C) the weapon is in plain view; or

(6) ~~[who is]~~ a peace officer, other than a person commissioned by the Texas State Board of Pharmacy.

~~(c) It is a defense to prosecution under this section for the offense of carrying a club that the actor was, at the time of the commission of the offense. [(b) The provision of Section 46.02 of this code prohibiting the carrying of a club does not apply to] a noncommissioned security guard at an institution of higher education who carried [carries] a nightstick or similar club, and who had [has] undergone 15 hours of training in the proper use of the club, including at least seven hours of training in the use of the club for nonviolent restraint. For the purposes of this section, "nonviolent restraint" means the use of reasonable force, not intended and not likely to inflict bodily injury.~~

~~(d) It is a defense to prosecution under this section for the offense of carrying a firearm or carrying a club that the actor was, at the time of the commission of the offense. [(c) The prohibition of carrying a handgun or club in Section 46.02 of this code does not apply to] a public security officer employed by the adjutant general under Section 431.029, Government Code, and was performing [in performance of] official duties or [while] traveling to or from a place of duty.~~

~~(e) Except as provided by Subsection (f), an offense under this section is a Class A misdemeanor.~~

(f) An offense under this section is a felony of the third degree if the offense is committed on any premises licensed or issued a permit by this state for the sale of alcoholic beverages.

Sec. ~~46.03~~ [46.04]. PLACES WEAPONS PROHIBITED. (a) A person commits an offense if, with a firearm, illegal knife, ~~club~~, or prohibited weapon listed in Section 46.05(a) [~~46.06(a) of this code~~], he intentionally, knowingly, or recklessly goes:

(1) on the premises of a school or an educational institution, whether public or private, unless pursuant to written regulations or written authorization of the institution;

(2) on the premises of a polling place on the day of an election or while early voting is in progress;

(3) in any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court; ~~or~~

(4) on the premises of a racetrack; ~~or~~

(5) into a secured area of an airport.

(b) It is a defense to prosecution under Subsections (a)(1)-(4) that the actor possessed a firearm [~~under Subsection (a) of this section~~] while in the actual discharge of his official duties as a peace officer or a member of the armed forces or national guard or a guard employed by a penal institution, or an officer of the court.

(c) In this section "secured area" means an area of an airport terminal building to which access is controlled by the inspection of persons and property under federal law.

(d) It is a defense to prosecution under Subsection (a)(5) that the actor possessed a firearm or club while traveling to or from the actor's place of assignment or in the actual discharge of duties as:

(1) a peace officer;

(2) a member of the armed forces or national guard;

(3) a guard employed by a penal institution; or

(4) a security officer commissioned by the Texas Board of Private Investigators and Private Security Agencies if:

(A) the actor is wearing a distinctive uniform; and

(B) the firearm or club is in plain view.

(e) It is a defense to prosecution under Subsection (a)(5) that the actor checked all firearms as baggage in accordance with federal or state law or regulations before entering a secured area.

(f) An offense under this section is a third degree felony.

Sec. 46.04 [46.05]. UNLAWFUL POSSESSION OF FIREARM BY FELON. (a) A person who has been convicted of a felony [~~involving an act of violence or threatened violence to a person or property~~] commits an offense if he possesses a firearm;

(1) after conviction and before the fifth anniversary of the person's release from confinement following conviction of the felony or the person's release from supervision under community supervision, parole, or mandatory supervision, whichever date is later; or

(2) after the period described by Subdivision (1), at any location other than the premises at which the person lives [away from the premises where he lives].

(b) An offense under this section is a felony of the third degree.

Sec. ~~46.05~~ [46.06]. PROHIBITED WEAPONS. (a) A person commits an offense if he intentionally or knowingly possesses, manufactures, transports, repairs, or sells:

- (1) an explosive weapon;
- (2) a machine gun;
- (3) a short-barrel firearm;
- (4) a firearm silencer;
- (5) a switchblade knife;
- (6) knuckles;
- (7) armor-piercing ammunition;
- (8) a chemical dispensing device; or
- (9) a zip gun.

(b) It is a defense to prosecution under this section that the actor's conduct was incidental to the performance of official duty by the armed forces or national guard, a governmental law enforcement agency, or a correctional facility [~~penal institution~~].

(c) It is a defense to prosecution under this section that the actor's possession was pursuant to registration pursuant to the National Firearms Act, as amended.

(d) It is an affirmative defense to prosecution under this section that the actor's conduct:

(1) was incidental to dealing with a switchblade knife, springblade knife, or short-barrel firearm solely as an antique or curio; or

(2) was incidental to dealing with armor-piercing ammunition solely for the purpose of making the ammunition available to an organization, agency, or institution listed in Subsection (b) [~~of this section~~].

(e) An offense under this section is a felony of the third [~~second~~] degree unless it is committed under Subsection (a)(5) or (a)(6) [~~of this section~~], in which event, it is a Class A misdemeanor.

Sec. ~~46.06~~ [46.07]. UNLAWFUL TRANSFER OF CERTAIN WEAPONS. (a) A person commits an offense if he:

(1) sells, rents, leases, loans, or gives a handgun to any person knowing that the person to whom the handgun is to be delivered intends to use it unlawfully or in the commission of an unlawful act;

(2) intentionally or knowingly sells, rents, leases, or gives or offers to sell, rent, lease, or give to any child younger than 18 years any ammunition, firearm, club, or illegal knife [~~or any martial arts throwing stars~~]; [~~or~~]

(3) intentionally, knowingly, or recklessly sells a firearm or ammunition for a firearm to any person who is intoxicated; or

(4) knowingly sells a firearm or ammunition for a firearm to any person who has been convicted of a felony before the fifth anniversary of the later of the following dates:

(A) the person's release from confinement following conviction of the felony; or

(B) the person's release from supervision under community supervision, parole, or mandatory supervision following conviction of the felony.

(b) For purposes of this section, "intoxicated" means substantial impairment of mental or physical capacity resulting from introduction of any substance into the body.

(c) It is an affirmative defense to prosecution under Subsection (a)(2) ~~[of this section]~~ that the transfer was to a minor whose parent or the person having legal custody of the minor had given written permission for the sale or, if the transfer was other than a sale, the parent or person having legal custody had given effective consent.

(d) An offense under this section is a Class A misdemeanor.

Sec. ~~46.07~~ ~~[46.08]~~. INTERSTATE PURCHASE. A resident of this state may, if not otherwise precluded by law, purchase firearms, ammunition, reloading components, or firearm accessories in contiguous states. This authorization is enacted in conformance with Section 922(b)(3)(A), Public Law 90-618, 90th Congress.

Sec. ~~46.08~~ ~~[46.09]~~. HOAX BOMBS. (a) A person commits an offense if the person knowingly manufactures, sells, purchases, transports, or possesses a hoax bomb with intent to use the hoax bomb to:

(1) make another believe that the hoax bomb is an explosive or incendiary device; or

(2) cause alarm or reaction of any type by an official of a public safety agency or volunteer agency organized to deal with emergencies.

(b) An offense under this section is a Class A misdemeanor.

Sec. ~~46.09~~ ~~[46.10]~~. COMPONENTS OF EXPLOSIVES. (a) A person commits an offense if the person knowingly possesses components of an explosive weapon with the intent to combine the components into an explosive weapon for use in a criminal endeavor.

(b) An offense under this section is a felony of the third degree.

Sec. ~~46.10~~ ~~[46.11]~~. DEADLY WEAPON IN PENAL INSTITUTION.

(a) A person commits an offense if, while confined in a penal institution, he intentionally, knowingly, or recklessly:

(1) carries on or about his person a deadly weapon; or

(2) possesses or conceals a deadly weapon in the penal institution.

(b) It is an affirmative defense to prosecution under this section that at the time of the offense the actor was engaged in conduct authorized by an employee of the penal institution.

(c) A person who is subject to prosecution under both this section and another section under this chapter may be prosecuted under either section.

(d) An offense under this section is a felony of the third degree.

~~[Sec. 46.12. UNLAWFUL CARRYING OF WEAPONS AT AIRPORT.~~

~~(a) A person commits an offense if the person intentionally, knowingly, or recklessly enters a secured area of an airport with a handgun or other firearm capable of being concealed on the person, illegal knife, or club.~~

~~[(b) In this section "secured area" means an area of an airport terminal building to which access is controlled by the inspection of persons and property under federal law.~~

~~[(c) It is a defense to prosecution that the actor possessed a firearm or club while traveling to or from the actor's place of assignment or in the actual discharge of duties as:~~

~~[(1) a peace officer;~~



~~[(2) a member of the armed forces or national guard;  
[(3) a guard employed by a penal institution; or  
[(4) a security officer commissioned by the Texas Board of Private  
Investigators and Private Security Agencies if:~~

~~[(A) the actor is wearing a distinctive uniform; and  
[(B) the firearm or club is in plain view.~~

~~[(d) It is a defense to prosecution that the actor checked all firearms  
as baggage in accordance with federal or state law or regulations before  
entering a secured area.~~

~~[(e) An offense under this section is a Class A misdemeanor.]~~

Sec. 46.12. PENALTY IF OFFENSE COMMITTED WITHIN  
WEAPON-FREE SCHOOL ZONE. (a) Except as provided by Subsection  
(b) of this section, the punishment prescribed for an offense under this  
chapter is increased to the punishment prescribed for the next highest  
category of offense if it is shown on trial of the offense that the offense  
was committed within 1,000 feet of a primary or secondary school subject  
to or eligible for accreditation by the Central Education Agency.

(b) This section does not apply to an offense under Section 46.03(a)(1)  
of this code.

Sec. 46.13. MAPS AS EVIDENCE OF LOCATION OR AREA. (a) In  
a prosecution under Section 46.13, a map produced or reproduced by a  
municipal or county engineer for the purpose of showing the location and  
boundaries of weapon-free school zones is admissible in evidence and is  
prima facie evidence of the location or boundaries of those areas if the  
governing body of the municipality or county adopts a resolution or  
ordinance approving the map as an official finding and record of the  
location or boundaries of those areas.

(b) A municipal or county engineer may, on request of the governing  
body of the municipality or county, revise a map that has been approved  
by the governing body of the municipality or county as provided in  
Subsection (a).

(c) A municipal or county engineer shall file the original or a copy of  
every approved or revised map approved as provided in Subsection (a) with  
the county clerk of each county in which the area is located.

(d) This section does not prevent the prosecution from:

(1) introducing or relying on any other evidence or testimony to  
establish any element of an offense for which punishment is increased  
under Section 46.12; or

(2) using or introducing any other map or diagram otherwise  
admissible under the Texas Rules of Criminal Evidence.

#### CHAPTER 47. GAMBLING

Sec. 47.01. DEFINITIONS. In this chapter:

(1) "Bet" means an agreement ~~[that, dependent on chance even  
though accompanied by some skill, one stands]~~ to win or lose something  
of value solely or partially by chance. A bet does not include:

(A) contracts of indemnity or guaranty, or life, health,  
property, or accident insurance;

(B) an offer of a prize, award, or compensation to the  
actual contestants in a bona fide contest for the determination of skill,

speed, strength, or endurance or to the owners of animals, vehicles, watercraft, or aircraft entered in a contest; ~~or~~

(C) an offer of merchandise, with a value not greater than \$25, made by the proprietor of a bona fide carnival contest conducted at a carnival sponsored by a nonprofit religious, fraternal, school, law enforcement, youth, agricultural, or civic group, including any nonprofit agricultural or civic group incorporated by the state before 1955, if the person to receive the merchandise from the proprietor is the person who performs the carnival contest; ~~or~~

~~[(D) an offer of merchandise, with a value not greater than \$25, made by the proprietor of a bona fide carnival contest conducted at a carnival sponsored by a nonprofit agricultural or civic group incorporated by the State of Texas prior to 1955].~~

(2) "Bookmaking" means:

(A) to receive and record or to forward more than five bets or offers to bet in a period of 24 hours;

(B) to receive and record or to forward bets or offers to bet totaling more than \$1,000 in a period of 24 hours; or

(C) a scheme by three or more persons to receive, record, or forward a bet or an offer to bet.

(3) "Gambling place" means any real estate, building, room, tent, vehicle, boat, or other property whatsoever, one of the uses of which is the making or settling of bets, bookmaking ~~[the receiving, holding, recording, or forwarding of bets or offers to bet]~~, or the conducting of a lottery or the playing of gambling devices.

(4) ~~[(3)]~~ "Gambling device" means any electronic, electromechanical, or mechanical contrivance not excluded under Paragraph (B) of this subdivision that for a consideration affords the player an opportunity to obtain anything of value, the award of which is determined solely or partially by chance, even though accompanied by some skill, whether or not the prize is automatically paid by the contrivance. The term:

(A) includes video poker or a similar electronic, electromechanical, or mechanical game that:

(i) operates solely or partially by chance;

(ii) as a result of operation awards free games or

credits;

(iii) records the number of free games or credits

awarded; and

(iv) records the cancellation or removal of the free

games or credits; but

(B) does not include an electronic, electromechanical, or mechanical contrivance designed, made, and adapted solely for bona fide amusement purposes if the contrivance rewards the player exclusively with noncash merchandise prizes, toys, or novelties, or a representation of value redeemable for those items, that have a wholesale value available from a single play of the contrivance of not more than 10 times the amount charged to play the contrivance once or \$5, whichever is less.

(5) [(4)] "Altered gambling equipment" means any contrivance that has been altered in some manner, including, but not limited to, shaved dice, loaded dice, magnetic dice, mirror rings, electronic sensors, shaved cards, marked cards, and any other equipment altered or [and] designed to enhance the actor's chances of winning.

(6) [(5)] "Gambling paraphernalia" means any book, instrument, or apparatus by means of which bets have been or may be recorded or registered; any record, ticket, certificate, bill, slip, token, writing, scratch sheet, or other means of carrying on bookmaking, wagering pools, lotteries, numbers, policy, or similar games.

(7) [(6)] "Lottery" means any scheme or procedure whereby one or more prizes are distributed by chance among persons who have paid or promised consideration for a chance to win anything of value, whether such scheme or procedure is called a pool, lottery, raffle, gift, gift enterprise, sale, policy game, or some other name.

(8) [(7)] "Private place" means a place to which the public does not have access, and excludes, among other places, streets, highways, restaurants, taverns, nightclubs, schools, hospitals, and the common areas of apartment houses, hotels, motels, office buildings, transportation facilities, and shops.

(9) [(8)] "Thing of value" means any benefit, but does not include an unrecorded and immediate right of replay not exchangeable for value.

Sec. 47.02. GAMBLING. (a) A person commits an offense if he:

(1) makes a bet on the partial or final result of a game or contest or on the performance of a participant in a game or contest;

(2) makes a bet on the result of any political nomination, appointment, or election or on the degree of success of any nominee, appointee, or candidate; or

(3) plays and bets for money or other thing of value at any game played with cards, dice, [or] balls, or any other gambling device.

(b) It is a defense to prosecution under this section that:

(1) the actor engaged in gambling in a private place;

(2) no person received any economic benefit other than personal winnings; and

(3) except for the advantage of skill or luck, the risks of losing and the chances of winning were the same for all participants.

(c) It is a defense to prosecution under this section that the actor reasonably believed that the conduct:

(1) was permitted under the Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes);

(2) was permitted under the Charitable Raffle Enabling Act (Article 179f, Revised Statutes); [or]

(3) consisted entirely of participation in the state lottery authorized by the State Lottery Act (Article 179g, Vernon's Texas Civil Statutes); or

(4) was permitted under the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes).

(d) It is a defense to prosecution under this section that a person played for something of value other than money using an electronic, electromechanical, or mechanical contrivance that is excluded from the definition of gambling device under Section 47.01(4)(B).

(e) An offense under this section is a Class C misdemeanor.

Sec. 47.03. GAMBLING PROMOTION. (a) A person commits an offense if he intentionally or knowingly does any of the following acts:

- (1) operates or participates in the earnings of a gambling place;
- (2) engages in bookmaking;
- (3) for gain, becomes a custodian of anything of value bet or offered to be bet;

(4) sells chances on the partial or final result of or on the margin of victory in any game or contest or on the performance of any participant in any game or contest or on the result of any political nomination, appointment, or election or on the degree of success of any nominee, appointee, or candidate; or

(5) for gain, sets up or promotes any lottery or sells or offers to sell or knowingly possesses for transfer, or transfers any card, stub, ticket, check, or other device designed to serve as evidence of participation in any lottery.

(b) ~~[In this section "bookmaking" means:~~

~~[(1) the receiving and recording of or the forwarding of more than five bets or offers to bet in one 24-hour period;~~

~~[(2) the receiving and recording of or the forwarding of bets or offers to bet totalling more than \$1,000 in one 24-hour period; or~~

~~[(3) a scheme by three or more persons to receive, record, or forward bets or offers to bet.~~

~~[(c)] An offense under this section is a Class A misdemeanor [felony of the third degree].~~

Sec. 47.04. KEEPING A GAMBLING PLACE. (a) A person commits an offense if he knowingly uses or permits another to use as a gambling place any real estate, building, room, tent, vehicle, boat, or other property whatsoever owned by him or under his control, or rents or lets any such property with a view or expectation that it be so used.

(b) It is an affirmative defense to prosecution under this section that:

- (1) the ~~[actor engaged in]~~ gambling occurred in a private place;
- (2) no person received any economic benefit other than personal winnings; and

(3) except for the advantage of skill or luck, the risks of losing and the chances of winning were the same for all participants.

~~(c) [It is an affirmative defense to prosecution under this section that the gambling place is aboard an ocean-going vessel that enters the territorial waters of this state to call at a port in this state if:~~

~~[(1) before the vessel enters the territorial waters of this state, the district attorney or, if there is no district attorney, the county attorney for the county in which the port is located receives notice of the existence of the gambling place on board the vessel and of the anticipated dates on which the vessel will enter and leave the territorial waters of this state;~~

~~[(2) the portion of the vessel that is used as a gambling place is locked or otherwise physically secured in a manner that makes the area inaccessible to anyone other than the master and crew of the vessel at all times while the vessel is in the territorial waters of this state;~~

~~[(3) no person other than the master and crew of the vessel is permitted to enter or view the gambling place while the vessel is in the territorial waters of this state; and~~

~~[(4) the gambling place is not used for gambling or other gaming purposes while the vessel is in the territorial waters of this state.~~

~~[(d)] An offense under this section is a Class A misdemeanor [felony of the third degree].~~

Sec. 47.05. COMMUNICATING GAMBLING INFORMATION. (a) A person commits an offense if, with the intent to further gambling, he knowingly communicates information as to bets, betting odds, or changes in betting odds or he knowingly provides, installs, or maintains equipment for the transmission or receipt of such information.

(b) It is an exception to the application of Subsection (a) that the information communicated is intended for use in placing a lawful wager under Article 11, Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), and is not communicated in violation of Section 14.01 of that Act.

(c) An offense under this section is a Class A misdemeanor ~~[felony of the third degree]~~.

Sec. 47.06. POSSESSION OF GAMBLING DEVICE, ~~[OR] EQUIPMENT, OR PARAPHERNALIA~~. (a) A person commits an offense if, ~~with the intent to further gambling,~~ he knowingly owns, manufactures, transfers, or possesses any gambling device that he knows is designed for gambling purposes or any equipment that he knows is designed as a subassembly or essential part of a gambling device.

(b) A person commits an offense if, with the intent to further gambling, he knowingly owns, manufactures, transfers commercially, or possesses any altered gambling equipment that he knows is designed for gambling purposes or any equipment that he knows is designed as a subassembly or essential part of such device.

(c) A person commits an offense if, with the intent to further gambling, the person knowingly owns, manufactures, transfers commercially, or possesses gambling paraphernalia.

(d) It is a defense to prosecution under Subsections (a) and (c) that:

(1) the device, equipment, or paraphernalia is used for or is intended for use in gambling that is to occur entirely in a private place;

(2) a person involved in the gambling does not receive any economic benefit other than personal winnings; and

(3) except for the advantage of skill or luck, the chance of winning is the same for all participants. [It is an affirmative defense to prosecution under this section that the device or equipment is aboard an ocean-going vessel that enters the territorial waters of this state to call at a port in this state if:

[(1) before the vessel enters the territorial waters of this state, the district attorney or, if there is no district attorney, the county attorney for the county in which the port is located receives notice of the existence of the device or equipment on board the vessel and of the anticipated dates on which the vessel will enter and leave the territorial waters of this state;

~~[(2) the portion of the vessel in which the device or equipment is located is locked or otherwise physically secured in a manner that makes the area inaccessible to anyone other than the master and crew of the vessel at all times while the vessel is in the territorial waters of this state;~~

~~[(3) no person other than the master and crew of the vessel is permitted to enter or view the portion of the vessel in which the device or equipment is located while the vessel is in the territorial waters of this state; and~~

~~[(4) the device or equipment is not used for gambling or other gaming purposes while the vessel is in the territorial waters of this state.~~

~~[(d) It is a defense to prosecution under this section that the gambling device is 15 years old or older and not used for gambling, gambling promotion, or keeping a gambling place under Sections 47.02, 47.03, and 47.04, respectively, of this code, and that the party possessing same;~~

~~[(1) within 30 days after coming into possession of same or the effective date of this amendment, whichever last occurs, furnished the following information to the sheriff of the county wherein such device is to be maintained:~~

~~[(A) the name and address of the party possessing same;~~

~~[(B) the name of the manufacturer, date of manufacture, and serial number of the device, if available; and~~

~~[(2) within 30 days of the transfer of such device advises the sheriff of the county to whom the information provided for in item (1) above was furnished of the name and address of the transferee.]~~

~~(e) An offense under this section is a Class A misdemeanor [felony of the third degree].~~

~~(f) It is a defense to prosecution under Subsection (a) or (c) [of this section] that the person owned, manufactured, transferred, or possessed the gambling device, [or] equipment, or paraphernalia for the sole purpose of shipping it to another jurisdiction where the possession or use of the device, [or] equipment, or paraphernalia was legal.~~

~~(g) A district or county attorney is not required to have a search warrant or subpoena to inspect a gambling device or gambling equipment or paraphernalia on an ocean-going vessel that enters the territorial waters of this state to call at a port in this state [It is a defense to prosecution for an offense under this chapter that the conduct was authorized, directly or indirectly, by the State Lottery Act, the lottery division in the office of the comptroller, the comptroller, or the director of the lottery division].~~

~~Sec. 47.07. [POSSESSION OF GAMBLING PARAPHERNALIA. (a) A person commits an offense if, with the intent to further gambling, he knowingly owns, manufactures, transfers commercially, or possesses gambling paraphernalia.~~

~~[(b) It is an affirmative defense to prosecution under this section that the gambling paraphernalia is aboard an ocean-going vessel that enters the territorial waters of this state to call at a port in this state if:~~

~~[(1) before the vessel enters the territorial waters of this state, the district attorney or, if there is no district attorney, the county attorney for the county in which the port is located receives notice of the existence of the gambling paraphernalia on board the vessel and of the anticipated dates on which the vessel will enter and leave the territorial waters of this state;~~

~~[(2) the portion of the vessel in which the gambling paraphernalia is located is locked or otherwise physically secured in a manner that makes the area inaccessible to anyone other than the master and crew of the vessel at all times while the vessel is in the territorial waters of this state;~~

~~[(3) no person other than the master and crew of the vessel is permitted to enter or view the portion of the vessel in which the gambling paraphernalia is located while the vessel is in the territorial waters of this state; and~~

~~[(4) the gambling paraphernalia is not used for gambling or other gaming purposes while the vessel is in the territorial waters of this state;~~

~~[(c) An offense under this section is a Class A misdemeanor.~~

~~[(d) The district or county attorney shall not be required to have a search warrant or subpoena to enter the vessel to inspect the gambling paraphernalia.~~

~~[(e) It is a defense to prosecution under this section that the person owned, manufactured, transferred commercially, or possessed the gambling paraphernalia for the sole purpose of shipping it to another jurisdiction where the possession or use of the paraphernalia was legal.~~

~~[Sec. 47.08.] EVIDENCE. [(a) Proof that an actor communicated gambling information or possessed a gambling device, equipment, or paraphernalia is prima facie evidence that the actor did so knowingly and with the intent to further gambling.~~

~~[(b)] In any prosecution under this chapter in which it is relevant to prove the occurrence of a sporting event, a published report of its occurrence in a daily newspaper, magazine, or other periodically printed publication of general circulation shall be admissible in evidence and is prima facie evidence that the event occurred.~~

Sec. ~~47.08~~ [47.09]. TESTIMONIAL IMMUNITY. (a) A party to an offense under this chapter may be required to furnish evidence or testify about the offense.

(b) A party to an offense under this chapter may not be prosecuted for any offense about which he is required to furnish evidence or testify, and the evidence and testimony may not be used against the party in any adjudicatory proceeding except a prosecution for aggravated perjury.

(c) For purposes of this section, "adjudicatory proceeding" means a proceeding before a court or any other agency of government in which the legal rights, powers, duties, or privileges of specified parties are determined.

(d) A conviction under this chapter may be had upon the uncorroborated testimony of a party to the offense.

Sec. 47.09. OTHER DEFENSES. (a) It is a defense to prosecution under this chapter that the conduct:

(1) was authorized under:

(A) the Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes);

(B) the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes); or

(C) the Charitable Raffle Enabling Act (Article 179f, Revised Statutes);

(2) consisted entirely of participation in the state lottery authorized by the State Lottery Act (Article 179g, Vernon's Texas Civil Statutes); or

(3) was a necessary incident to the operation of the state lottery and was directly or indirectly authorized by the:

(A) State Lottery Act;

(B) lottery division of the comptroller's office;

(C) comptroller; or

(D) director of the lottery division.

(b) It is an affirmative defense to prosecution under Sections 47.04, 47.06(a), and 47.06(c) that the gambling device, equipment, or paraphernalia is aboard an ocean-going vessel that enters the territorial waters of this state to call at a port in this state if:

(1) before the vessel enters the territorial waters of this state, the district attorney or, if there is no district attorney, the county attorney for the county in which the port is located receives notice of the existence of the device, equipment, or paraphernalia on board the vessel and of the anticipated dates on which the vessel will enter and leave the territorial waters of this state;

(2) the portion of the vessel in which the device, equipment, or paraphernalia is located is locked or otherwise physically secured in a manner that makes the area inaccessible to anyone other than the master and crew of the vessel at all times while the vessel is in the territorial waters of this state;

(3) no person other than the master and crew of the vessel is permitted to enter or view the portion of the vessel in which the device, equipment, or paraphernalia is located while the vessel is in the territorial waters of this state; and

(4) the device, equipment, or paraphernalia is not used for gambling or other gaming purposes while the vessel is in the territorial waters of this state.

~~Sec. 47.10. [BINGO. It is a defense to prosecution for an offense under this chapter that the conduct was authorized under the Bingo Enabling Act.~~

~~[Sec. 47.11. PARI-MUTUEL WAGERING ON CERTAIN RACES. It is a defense to prosecution for an offense under this chapter that the conduct was authorized under the Texas Racing Act.~~

~~[Sec. 47.12. RAFFLE BY NONPROFIT ORGANIZATION. It is a defense to prosecution under this chapter that the conduct was authorized by the Charitable Raffle Enabling Act (Article 179f, Revised Statutes).~~

~~[Sec. 47.13.] AMERICAN DOCUMENTATION OF VESSEL REQUIRED. If 18 U.S.C. Section 1082 is repealed, the affirmative defenses provided by Section 47.09(b) [Sections 47.04(c), 47.06(c), and 47.07(b) of this code] apply only if the vessel is documented under the laws of the United States.~~

Sec. 47.11. AMUSEMENT GAME GAMBLING. (a) A person commits an offense if the person:

(1) owns or possesses an electronic, electromechanical, or mechanical contrivance that is excluded from the definition of gambling



device under Section 47.01(4)(B) of this code or is employed by or acting on behalf of a person who owns or possesses such a contrivance; and

(2) gives another person money in exchange for or in consideration of a noncash merchandise prize, toy, or novelty, or a representation of value redeemable for those items, received as an award in playing the contrivance.

(b) An offense under this section is a Class B misdemeanor.

[Sec. 47.14. STATE LOTTERY. It is a defense to prosecution for an offense under this chapter that the conduct:

[(1) consisted entirely of participation in the state lottery authorized by the State Lottery Act; or

[(2) was a necessary incident to the operation of the state lottery and was authorized, directly or indirectly, by the State Lottery Act, the lottery division in the office of the comptroller, the comptroller, or the director of the lottery division.]

#### CHAPTER 48. CONDUCT AFFECTING PUBLIC HEALTH

Sec. 48.01. SMOKING TOBACCO. (a) A person commits an offense if he is in possession of a burning tobacco product or smokes tobacco in a facility of a public primary or secondary school or an elevator, enclosed theater or movie house, library, museum, hospital, transit system bus, or intrastate bus, as defined by Section 4(b) of the Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), plane, or train which is a public place.

(b) It is a defense to prosecution under this section that the conveyance or public place in which the offense takes place does not have prominently displayed a reasonably sized notice that smoking is prohibited by state law in such conveyance or public place and that an offense is punishable by a fine not to exceed \$500.

(c) All conveyances and public places set out in Subsection (a) of Section 48.01 shall be equipped with facilities for extinguishment of smoking materials and it shall be a defense to prosecution under this section if the conveyance or public place within which the offense takes place is not so equipped.

(d) It is an exception to the application of Subsection (a) if the person is in possession of the burning tobacco product or smokes tobacco exclusively within an area designated for smoking tobacco or as a participant in an authorized theatrical performance.

(e) An area designated for smoking tobacco on a transit system bus or intrastate plane or train must also include the area occupied by the operator of the transit system bus, plane, or train.

(f) An offense under this section is punishable as a Class C misdemeanor.

Sec. 48.02. PROHIBITION OF THE PURCHASE AND SALE OF HUMAN ORGANS. (a) "Human organ" means the human kidney, liver, heart, lung, pancreas, eye, bone, skin, fetal tissue, or any other human organ or tissue, but does not include hair or blood, blood components (including plasma), blood derivatives, or blood reagents.

(b) A person commits an offense if he or she knowingly or intentionally offers to buy, offers to sell, acquires, receives, sells, or otherwise transfers any human organ for valuable consideration.

(c) It is an exception to the application of this section that the valuable consideration is: (1) a fee paid to a physician or to other medical personnel for services rendered in the usual course of medical practice or a fee paid for hospital or other clinical services; (2) reimbursement of legal or medical expenses incurred for the benefit of the ultimate receiver of the organ; or (3) reimbursement of expenses of travel, housing, and lost wages incurred by the donor of a human organ in connection with the donation of the organ.

(d) A violation of this section is a Class A misdemeanor [~~felony of the third degree~~].

#### CHAPTER 49. INTOXICATION AND ALCOHOLIC BEVERAGE OFFENSES

##### Sec. 49.01. DEFINITIONS. In this chapter:

(1) "Alcohol concentration" means the number of grams of alcohol per:

- (A) 210 liters of breath;
- (B) 100 milliliters of blood; or
- (C) 67 milliliters of urine.

(2) "Intoxicated" means:

(A) not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug, a combination of two or more of those substances, or any other substance into the body; or

(B) having an alcohol concentration of 0.10 or more.

(3) "Motor vehicle" has the meaning assigned by Section 32.34(a).

(4) "Watercraft" means a vessel, one or more water skis, an aquaplane, or another device used for transporting or carrying a person on water, other than a device propelled only by the current of water.

Sec. 49.02. PUBLIC INTOXICATION. (a) A person commits an offense if the person appears in a public place while intoxicated to the degree that the person may endanger the person or another.

(b) It is a defense to prosecution under this section that the alcohol or other substance was administered for therapeutic purposes and as a part of the person's professional medical treatment by a licensed physician.

(c) An offense under this section is a Class C misdemeanor.

(d) An offense under this section is not a lesser included offense under Section 49.04.

Sec. 49.03. CONSUMPTION OR POSSESSION OF ALCOHOLIC BEVERAGE IN MOTOR VEHICLE. (a) A person commits an offense if the person consumes an alcoholic beverage while operating a motor vehicle in a public place and is observed doing so by a peace officer.

(b) An offense under this section is a Class C misdemeanor.

Sec. 49.04. DRIVING WHILE INTOXICATED. (a) A person commits an offense if the person is intoxicated while driving or operating a motor vehicle in a public place.

(b) Except as provided by Subsection (c) and Section 49.09, an offense under this section is a Class B misdemeanor, with a minimum term of confinement of 72 hours.

(c) If it is shown on the trial of an offense under this section that at the time of the offense the person driving or operating the motor vehicle had an open container of alcohol in the person's immediate possession, the offense is a Class B misdemeanor, with a minimum term of confinement of six days.

Sec. 49.05. FLYING WHILE INTOXICATED. (a) A person commits an offense if the person is intoxicated while operating an aircraft.

(b) Except as provided by Section 49.09, an offense under this section is a Class B misdemeanor, with a minimum term of confinement of 72 hours.

Sec. 49.06. BOATING WHILE INTOXICATED. (a) A person commits an offense if the person is intoxicated while operating a watercraft.

(b) Except as provided by Section 49.09, an offense under this section is a Class B misdemeanor, with a minimum term of confinement of 72 hours.

Sec. 49.07. INTOXICATION ASSAULT. (a) A person commits an offense if the person, by accident or mistake, while operating an aircraft, watercraft, or motor vehicle in a public place while intoxicated, by reason of that intoxication causes serious bodily injury to another.

(b) In this section, "serious bodily injury" means injury that creates a substantial risk of death or that causes serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

(c) An offense under this section is a felony of the third degree.

Sec. 49.08. INTOXICATION MANSLAUGHTER. (a) A person commits an offense if the person:

(1) operates a motor vehicle in a public place, an aircraft, or a watercraft; and

(2) is intoxicated and by reason of that intoxication causes the death of another by accident or mistake.

(b) An offense under this section is a felony of the second degree.

Sec. 49.09. ENHANCED OFFENSES AND PENALTIES. (a) If it is shown on the trial of an offense under Section 49.04, 49.05, or 49.06 that the person has previously been convicted one time of an offense relating to the driving or operating of a motor vehicle while intoxicated, an offense of operating an aircraft while intoxicated, or an offense of operating a watercraft while intoxicated, the offense is a Class A misdemeanor, with a minimum term of confinement of 15 days.

(b) If it is shown on the trial of an offense under Section 49.04, 49.05, or 49.06 that the person has previously been convicted two times of an offense relating to the driving or operating of a motor vehicle while intoxicated, an offense of operating an aircraft while intoxicated, or an offense of operating a watercraft while intoxicated, the offense is a felony of the third degree.

(c) For the purposes of this section:

(1) "Offense relating to the driving or operating of a motor vehicle while intoxicated" means:

(A) an offense under Section 49.04;  
(B) an offense under Article 67011-1, Revised Statutes, as that law existed before January 1, 1984;

(C) an offense under Article 67011-2, Revised Statutes, as that law existed before January 1, 1984; or

(D) an offense under the laws of another state that prohibit the operation of a motor vehicle while intoxicated.

(2) "Offense of operating an aircraft while intoxicated" means:

(A) an offense under Section 49.05;

(B) an offense under Section 1, Chapter 46, Acts of the 58th Legislature, Regular Session, 1963 (Article 46f-3, Vernon's Texas Civil Statutes), as that law existed before September 1, 1994; or

(C) an offense under the laws of another state that prohibit the operation of an aircraft while intoxicated.

(3) "Offense of operating a watercraft while intoxicated" means:

(A) an offense under Section 49.06;

(B) an offense under Section 31.097, Parks and Wildlife Code, as that law existed before September 1, 1994; or

(C) an offense under the laws of another state that prohibit the operation of a watercraft while intoxicated.

(d) For the purposes of this section, a conviction for an offense under Section 49.04, 49.05, or 49.06 that occurs on or after September 1, 1994, is a final conviction, whether the sentence for the conviction is imposed or probated.

(e) A conviction may not be used for purposes of enhancement under this section if:

(1) the conviction was a final conviction under Subsection (e) of this section and was for an offense committed more than 10 years before the offense for which the person is being tried was committed; and

(2) the person has not been convicted of an offense under Section 49.04, 49.05, or 49.06 or any offense related to driving or operating a motor vehicle while intoxicated committed within 10 years before the date on which the offense for which the person is being tried was committed.

Sec. 49.10. NO DEFENSE. In a prosecution under Section 49.03, 49.04, 49.05, 49.06, 49.07, or 49.08, the fact that the defendant is or has been entitled to use the alcohol, controlled substance, drug, dangerous drug, or other substance is not a defense.

#### TITLE 11. ORGANIZED CRIME

#### [AND CRIMINAL STREET GANGS]

#### CHAPTER 71. ORGANIZED CRIME [AND CRIMINAL STREET GANGS]

Sec. 71.01. DEFINITIONS. In this chapter,

(a) "Combination" means three or more persons who collaborate in carrying on criminal activities, although:

(1) participants may not know each other's identity;

(2) membership in the combination may change from time to time;

and

(3) participants may stand in a wholesaler-retailer or other arm's-length relationship in illicit distribution operations.

(b) "Conspires to commit" means that a person agrees with one or more persons that they or one or more of them engage in conduct that would constitute the offense and that person and one or more of them perform an overt act in pursuance of the agreement. An agreement constituting conspiring to commit may be inferred from the acts of the parties.

(c) "Profits" means property constituting or derived from any proceeds obtained, directly or indirectly, from an offense listed in Section 71.02 ~~[of this code]~~.

~~[(d) "Criminal street gang" means three or more persons having a common identifying sign or symbol or an identifiable leadership who continuously or regularly associate in the commission of criminal activities.]~~

Sec. 71.02. ENGAGING IN ORGANIZED CRIMINAL ACTIVITY.

(a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination ~~[or as a member of a criminal street gang]~~, he commits or conspires to commit one or more of the following:

(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, or forgery;

(2) any ~~[felony]~~ gambling offense punishable as a Class A misdemeanor;

(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;

(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;

(6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;

(7) any unlawful employment, authorization, or inducing of a child younger than 17 years of age in an obscene sexual performance;

(8) any felony offense under Chapter 32, Penal Code; or

(9) any offense under Chapter 36, Penal Code.

(b) Except as provided in Subsections ~~[Subsection]~~ (c) and (d) ~~[of this section]~~, an offense under this section is one category higher than the most serious offense listed in ~~[Subdivisions (1) through (9) of]~~ Subsection (a) ~~[of this section]~~ that was committed, and if the most serious offense is a Class A misdemeanor, the offense is a state jail felony ~~[of the third degree]~~, except that if the most serious offense is a felony of the first degree, the offense is a felony of the first degree.

(c) Conspiring to commit an offense under this section is of the same degree as the most serious offense listed in ~~[Subdivisions (1) through (9) of]~~ Subsection (a) ~~[of this section]~~ that the person conspired to commit.

(d) At the punishment stage of a trial, the defendant may raise the issue as to whether in voluntary and complete renunciation of the offense he withdrew from the combination before commission of an offense listed in Subsection (a) and made substantial effort to prevent the commission of the offense. If the defendant proves the issue in the affirmative by a preponderance of the evidence the offense is the same category of offense as the most serious offense listed in Subsection (a) that is committed, unless the defendant is convicted of conspiring to commit the offense, in which event the offense is one category lower than the most serious offense that the defendant conspired to commit.

Sec. 71.03. DEFENSES EXCLUDED. It is no defense to prosecution under Section 71.02 ~~[of this code]~~ that:

(1) one or more members of the combination are not criminally responsible for the object offense;

(2) one or more members of the combination have been acquitted, have not been prosecuted or convicted, have been convicted of a different offense, or are immune from prosecution;

(3) a person has been charged with, acquitted, or convicted of any offense listed in Subsection (a) of Section 71.02 ~~[of this code]~~; or

(4) once the initial combination of ~~three~~ [five] or more persons is formed there is a change in the number or identity of persons in the combination as long as two or more persons remain in the combination and are involved in a continuing course of conduct constituting an offense under this chapter.

Sec. 71.04. TESTIMONIAL IMMUNITY. (a) A party to an offense under this chapter may be required to furnish evidence or testify about the offense.

(b) No evidence or testimony required to be furnished under the provisions of this section nor any information directly or indirectly derived from such evidence or testimony may be used against the witness in any criminal case, except a prosecution for aggravated perjury or contempt.

Sec. 71.05. RENUNCIATION DEFENSE. (a) It is an affirmative defense to prosecution under Section 71.02 ~~[of this code]~~ that under circumstances manifesting a voluntary and complete renunciation of his criminal objective the actor withdrew from the combination before commission of an offense listed in ~~[Subdivisions (1) through (7) of]~~ Subsection (a) of Section 71.02 ~~[of this code]~~ and took further affirmative action that prevented the commission of the offense.

(b) For the purposes of this section and Section 71.02(d), renunciation [Renunciation] is not voluntary if it is motivated in whole or in part:

(1) by circumstances not present or apparent at the inception of the actor's course of conduct that increase the probability of detection or apprehension or that make more difficult the accomplishment of the objective; or

(2) by a decision to postpone the criminal conduct until another time or to transfer the criminal act to another but similar objective or victim.

~~[(c) Evidence that the defendant withdrew from the combination before commission of an offense listed in Subdivisions (1) through (7) of]~~

~~Subsection (a) of Section 71.02 of this code and made substantial effort to prevent the commission of an offense listed in Subdivisions (1) through (7) of Subsection (a) of Section 71.02 of this code shall be admissible as mitigation at the hearing on punishment if he has been found guilty under Section 71.02 of this code, and in the event of a finding of renunciation under this subsection, the punishment shall be one grade lower than that provided under Section 71.02 of this code.]~~

SECTION 1.02. Section 5, Chapter 275, Acts of the 67th Legislature, Regular Session, 1981, and Section 1, Chapter 587, Acts of the 69th Legislature, Regular Session, 1985, are repealed.

SECTION 1.03. Chapter 3, Code of Criminal Procedure, is amended by adding Article 3.04 to read as follows:

Art. 3.04. OFFICIAL MISCONDUCT. In this code:

(1) "Official misconduct" means an offense that is an intentional or knowing violation of a law committed by a public servant while acting in an official capacity as a public servant.

(2) "Public servant" has the meaning assigned by Section 1.07, Penal Code.

SECTION 1.04. Chapter 14, Code of Criminal Procedure, is amended by adding Article 14.031 to read as follows:

Art. 14.031. PUBLIC INTOXICATION. (a) In lieu of arresting an individual who commits an offense under Section 49.02, Penal Code, a peace officer may release an individual if:

(1) the officer believes detention in a penal facility is unnecessary for the protection of the individual or others; and

(2) the individual:

(A) is released to the care of an adult who agrees to assume responsibility for the individual; or

(B) verbally consents to voluntary treatment for chemical dependency in a program in a treatment facility licensed and approved by the Texas Commission on Alcohol and Drug Abuse, and the program admits the individual for treatment.

(b) A magistrate may release from custody an individual arrested under Section 49.02, Penal Code, if the magistrate determines the individual meets the conditions required for release in lieu of arrest under Subsection (a) of this article.

(c) The release of an individual under Subsection (a) or (b) of this article to an alcohol or drug treatment program may not be considered by a peace officer or magistrate in determining whether the individual should be released to such a program for a subsequent incident or arrest under Section 49.02, Penal Code.

(d) A peace officer and the agency or political subdivision that employs the peace officer may not be held liable for damage to persons or property that results from the actions of an individual released under Subsection (a) or (b) of this article.

SECTION 1.05. Article 14.06(b), Code of Criminal Procedure, is amended to read as follows:

(b) A peace officer who is charging a person with committing an offense that is a Class C misdemeanor, other than an offense under Section

49.02 [42.08], Penal Code, may, instead of taking the person before a magistrate, issue a citation to the person that contains written notice of the time and place the person must appear before a magistrate, the name and address of the person charged, and the offense charged.

SECTION 1.06. Article 18.20, Code of Criminal Procedure, is amended by adding Section 18 to read as follows:

Sec. 18. This article expires September 1, 2005, and shall not be in force on and after that date.

SECTION 1.07. Subchapter A, Chapter 102, Code of Criminal Procedure, is amended by adding Article 102.017 to read as follows:

Art. 102.017. COSTS ATTENDANT TO INTOXICATION CONVICTIONS. (a) Except as provided by Subsection (d) of this article, on conviction of an offense relating to the driving or operating of a motor vehicle under Section 49.04, Penal Code, the court shall impose a cost of \$15 on a defendant if, subsequent to the arrest of the defendant, a law enforcement agency visually recorded the defendant with an electronic device. Costs imposed under this subsection are in addition to other court costs and are due whether or not the defendant is granted probation in the case. The court shall collect the costs in the same manner as other costs are collected in the case.

(b) Except as provided by Subsection (d) of this article, on conviction of an offense relating to the driving or operating of a motor vehicle punishable under Section 49.04(b), Penal Code, the court shall impose as a cost of court on the defendant an amount that is equal to the cost of an evaluation of the defendant performed under Section 13(a), Article 42.12, of this code. Costs imposed under this subsection are in addition to other court costs and are due whether or not the defendant is granted probation in the case, except that if the court determines that the defendant is indigent and unable to pay the cost, the court may waive the imposition of the cost.

(c)(1) Except as provided by Subsection (d) of this article, if a person commits an offense under Chapter 49, Penal Code, and as a direct result of the offense the person causes an incident resulting in an accident response by a public agency, the person is liable on conviction for the offense for the reasonable expense to the agency of the accident response. In this article, a person is considered to have been convicted in a case if:

(A) sentence is imposed;

(B) the defendant receives probation or deferred adjudication; or

(C) the court defers final disposition of the case.

(2) The liability authorized by this subsection may be established by civil suit; however, if a determination is made during a criminal trial that a person committed an offense under Chapter 49, Penal Code, and as a direct result of the offense the person caused an incident resulting in an accident response by a public agency, the court may include the obligation for the liability as part of the judgment. A judgment that includes such an obligation is enforceable as any other judgment.

(3) The liability is a debt of the person to the public agency, and the public agency may collect the debt in the same manner as the public agency collects an express or implied contractual obligation to the agency.



(4) A person's liability under this subsection for the reasonable expense of an accident response may not exceed \$1,000 for a particular incident. For the purposes of this subdivision, a reasonable expense for an accident response includes only those costs to the public agency arising directly from an accident response to a particular incident, such as the cost of providing police, fire-fighting, rescue, ambulance, and emergency medical services at the scene of the incident and the salaries of the personnel of the public agency responding to the incident.

(5) A bill for the expense of an accident response sent to a person by a public agency under this subsection must contain an itemized accounting of the components of the total charge. A bill that complies with this subdivision is prima facie evidence of the reasonableness of the costs incurred in the accident response to which the bill applies.

(6) A policy of motor vehicle insurance delivered, issued for delivery, or renewed in this state may not cover payment of expenses charged to a person under this subsection.

(7) In this subsection, "public agency" means the state, a county, a municipality district, or a public authority located in whole or in part in this state that provides police, fire-fighting, rescue, ambulance, or emergency medical services.

(d) Subsections (a), (b), and (c) of this article do not apply to an offense under Section 49.02 or 49.03, Penal Code.

SECTION 1.08. Subsection (g), Section 24, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), is amended by amending Subdivision (2) and adding Subdivision (5) to read as follows:

(2)(A) After the date has passed, according to records of the Department, for successful completion of an educational program designed to rehabilitate persons who have driven while intoxicated, if the records do not indicate successful completion of the program, the Director shall suspend the person's driver's license, permit, or nonresident operating privilege or, if the person is a resident without a license or permit to operate a motor vehicle in this state, shall issue an order prohibiting the person from obtaining a license or permit. A suspension or prohibition order under this subsection is effective for a period of twelve (12) months.

(B) After the date has passed, according to records of the Department, for successful completion of an educational program for repeat offenders as required by Section 13, Article 42.12, Code of Criminal Procedure, if the records do not indicate successful completion of the program, the Director shall suspend the person's driver's license, permit, or nonresident operating privilege or, if the person is a resident without a license or permit to operate a motor vehicle in this state, shall issue an order prohibiting the person from obtaining a license or permit. A suspension or prohibition order under this subsection is continued until the person successfully completes that program.

(5) On the date that a suspension under Subsection (c) of this section is to expire, the period of suspension or the corresponding period in which the Department is prohibited from issuing a license to a person is automatically increased for a period of 24 months unless the Department

has received notice that the person has successfully completed an educational program under Section 13, Article 42.12, Code of Criminal Procedure. At the time a person is convicted of an offense under Section 49.04, Penal Code, the court shall warn the person of the effect of this subdivision. On successful completion of the program, a person shall present proof of the completion to the clerk of the court in which the person was convicted. The clerk shall report the date of completion to the Department in the same manner as required by Section 13, Article 42.12, Code of Criminal Procedure. If the Department receives proof of completion after a period of suspension or prohibition has been extended under this subdivision, the Department shall immediately end the suspension or prohibition. This subdivision does not apply to a person whose license the Department is prohibited from suspending under Subdivision (1) of this subsection.

SECTION 1.09. Section 1, Chapter 434, Acts of the 61st Legislature, Regular Session, 1969 (Article 67011-5, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. Any person who operates a motor vehicle ~~in [upon the public highways or upon]~~ a public ~~place, or a watercraft, [beach]~~ in this state shall be deemed to have given consent, subject to the provisions of this Act, to submit to the taking of one or more specimens of his breath or blood for the purpose of analysis to determine the alcohol concentration or the presence in his body of a controlled substance, ~~[or] drug, dangerous drug, or other substance,~~ if arrested for any offense arising out of acts alleged to have been committed while a person was driving or in actual physical control of a motor vehicle ~~or a watercraft~~ while intoxicated. Any person so arrested may consent to the giving of any other type of specimen to determine his alcohol concentration, but he shall not be deemed, solely on the basis of his operation of a motor vehicle ~~in [upon the public highways or upon]~~ a public ~~place, or a watercraft, [beach]~~ in this state, to have given consent to give any type of specimen other than a specimen of his breath or blood. The specimen, or specimens, shall be taken at the request of a peace officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle ~~in [upon the public highways or upon]~~ a public ~~place, or a watercraft, [beach]~~ in this state while intoxicated.

SECTION 1.10. Section 2, Chapter 434, Acts of the 61st Legislature, Regular Session, 1969 (Article 67011-5, Vernon's Texas Civil Statutes), is amended by amending Subsection (f) and adding Subsections (j) and (k) to read as follows:

(f) When the director receives the report, the director shall suspend the person's license, permit, or nonresident operating privilege, or shall issue an order prohibiting the person from obtaining a license or permit, for 90 days effective 28 days after the date the person receives notice by certified mail or 31 days after the date the director sends notice by certified mail, if the person has not accepted delivery of the notice. If, not later than the 20th day after the date on which the person receives notice by certified mail or the 23rd day after the date the director sent notice by certified mail, if the person has not accepted delivery of the notice, the department

receives a written demand that a hearing be held, the department shall, not later than the 10th day after the day of receipt of the demand, request a court to set the hearing for the earliest possible date. The hearing shall be set in the same manner as a hearing under Section 22(a), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes). If, upon such hearing the court finds (1) that probable cause existed that such person was driving or in actual physical control of a motor vehicle ~~in~~ ~~[on the highway or upon]~~ a public ~~place~~ ~~[beach]~~ while intoxicated, (2) that the person was placed under arrest by the officer and was offered an opportunity to give a specimen under the provisions of this Act, and (3) that such person refused to give a specimen upon request of the officer, then the Director of the ~~[Texas]~~ Department of Public Safety shall suspend the person's license or permit to drive, or any nonresident operating privilege for a period of 90 days, as ordered by the court. If the person is a resident without a license or permit to operate a motor vehicle in this State, the ~~[Texas]~~ Department of Public Safety shall deny to the person the issuance of a license or permit for 90 days.

(j) This section applies only to a person arrested for an offense involving the operation of a motor vehicle.

(k) A suspension under this Act may not be probated.

SECTION 1.11. Sections 3(a), (c), (h), (i), and (j), Chapter 434, Acts of the 61st Legislature, Regular Session, 1969 (Article 67011-5, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) Upon the trial of any criminal action or proceeding arising out of an offense involving the operation of a motor vehicle or a watercraft under Chapter 49 [Subdivision (2), Subsection (a), Section 19.05], Penal Code, ~~[or an offense under Article 67011-1, Revised Statutes,]~~ evidence of the alcohol concentration or presence of a controlled substance, ~~[or]~~ drug, dangerous drug, or other substance as shown by analysis of a specimen of the person's blood, breath, urine, or any other bodily substances taken at the request or order of a peace officer, shall be admissible.

(c) When a person gives a specimen of blood at the request or order of a peace officer under the provisions of this Act, only a physician, qualified technician, chemist, registered professional nurse, or licensed vocational nurse may withdraw a blood specimen for the purpose of determining the alcohol concentration or presence of a controlled substance, ~~[or]~~ drug, dangerous drug, or other substance therein. For purposes of this subsection, "qualified technician" does not include emergency medical services personnel. The sample must be taken in a sanitary place. The person drawing the blood specimen at the request or order of a peace officer under the provisions of this Act, or the hospital where that person is taken for the purpose of securing the blood specimen, shall not be held liable for damages arising from the request or order of the peace officer to take the blood specimen as provided herein, provided the blood specimen was withdrawn according to recognized medical procedures, and provided further that the foregoing shall not relieve any such person from liability for negligence in the withdrawing of any blood specimen. Breath specimens taken at the request or order of a peace

officer must be taken and analysis made under such conditions as may be prescribed by the ~~[Texas]~~ Department of Public Safety, and by such persons as the ~~[Texas]~~ Department of Public Safety has certified to be qualified.

(h) Any person who is dead, unconscious, or otherwise in a condition rendering the person incapable of refusal, whether the person was arrested or not, shall be deemed not to have withdrawn the consent provided by Section 1 of this Act. If the person is dead, a specimen may be withdrawn by the county medical examiner or the examiner's designated agent or, if there is no county medical examiner for the county, by a licensed mortician or a person authorized as provided by Subsection (c) of this section. If the person is not dead but is incapable of refusal, a specimen may be withdrawn by a person authorized as provided by Subsection (c) of this section. Evidence of alcohol concentration or the presence of a controlled substance, ~~or~~ drug, dangerous drug, or other substance obtained by an analysis authorized by this subsection is admissible in a civil or criminal action.

(i) A peace officer shall require a person to give a specimen under Section 2 of this Act if:

(1) the officer arrests the person for an offense involving the operation of a motor vehicle or a watercraft under Chapter 49 [Subdivision (2), Subsection (a), Section 19.05], Penal Code[, or an offense under Article 67011-1, Revised Statutes, as amended];

(2) the person was the operator of a motor vehicle or a watercraft involved in an accident that the officer reasonably believes occurred as a result of the offense;

(3) at the time of the arrest the officer reasonably believes that a person has died or will die as a direct result of the accident; and

(4) the person refuses the officer's request to voluntarily give a specimen.

(j) In this Act:

(1) "Alcohol concentration" has the meaning assigned by Section 49.01, Penal Code [means:

~~[(A) the number of grams of alcohol per 100 milliliters of blood;~~

~~[(B) the number of grams of alcohol per 210 liters of breath; or~~

~~[(C) the number of grams of alcohol per 67 milliliters of urine].~~

(2) "Controlled substance" has the ~~[same]~~ meaning assigned by [as is given that term in] Section 481.002, Health and Safety Code.

(3) "Dangerous drug" has the meaning assigned by Section 483.001, Health and Safety Code.

(4) "Drug" has the ~~[same]~~ meaning assigned by [as is given that term in] Section 481.002, Health and Safety Code.

(5) ~~(4)~~ "Intoxicated" has the meaning assigned by Section 49.01, Penal Code [means:

~~[(A) not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance;~~

~~a drug, or a combination of two or more of those substances into the body, or~~

~~[(B) having an alcohol concentration of 0.10 or more].~~

~~[(5) "Public beach" has the same meaning as is given that term in the Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes).]~~

~~(6) ["Public highway" has the same meaning as is given the term "highway" in the Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes).]~~

~~[(7) "Public place" has the meaning assigned by [Subdivision (29), Subsection (a),] Section 1.07, Penal Code.~~

SECTION 1.12. Section 31.097, Parks and Wildlife Code, is repealed.

SECTION 1.13. Section 1, Chapter 46, Acts of the 58th Legislature, Regular Session, 1963 (Article 46f-3, Vernon's Texas Civil Statutes), is repealed.

SECTION 1.14. Section 107E, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), is repealed.

SECTION 1.15. Article 6701l-1, Revised Statutes, is repealed.

SECTION 1.16. Section 11.17, Chapter 10, Acts of the 72nd Legislature, 2nd Called Session, 1991, is repealed.

SECTION 1.17. (a) The change in law made by this article applies only to an offense committed on or after the effective date of this article. For purposes of this section, an offense is committed before the effective date of this article if any element of the offense occurs before the effective date.

(b) An offense committed before the effective date of this article is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 1.18. (a) Except as provided by Subsection (b) of this section, this article takes effect on September 1, 1994.

(b) The repeal of Section 12.422, Penal Code, as provided by Section 1.01 of this article, Section 16.02(i), Penal Code, as added by Section 1.01 of this article, and Sections 1.02, 1.06, and 1.16 of this article take effect September 1, 1993.

## ARTICLE 2

SECTION 2.01. Section 481.002, Health and Safety Code, is amended by adding Subdivision (49) to read as follows:

(49) "Adulterant or dilutant" means any material that increases the bulk or quantity of a controlled substance, regardless of its effect on the chemical activity of the controlled substance.

SECTION 2.02. Sections 481.108, 481.112, 481.113, 481.114, 481.115, 481.116, 481.117, 481.118, 481.120, 481.121, 481.122, 481.125, 481.126, 481.127, 481.128, 481.129, and 481.131, Health and Safety Code, are amended to read as follows:

Sec. 481.108. PREPARATORY OFFENSES. Title 4, Penal Code, applies to Section 481.126 ~~[and offenses designated as aggravated offenses under this subchapter]~~, except that the punishment for a preparatory offense under Section 481.126 is the punishment for a first degree felony ~~[the same as the punishment prescribed for the offense that was the object of the preparatory offense].~~

Sec. 481.112. OFFENSE: MANUFACTURE OR DELIVERY OF SUBSTANCE IN PENALTY GROUP 1. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance listed in Penalty Group 1.

(b) An offense under Subsection (a) is a state jail felony ~~[of the first degree]~~ if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, less than one gram ~~[28 grams]~~.

(c) ~~An~~ ~~[A person commits an aggravated offense if the person commits an]~~ offense under Subsection (a) is a felony of the third degree if ~~[and]~~ the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, one gram ~~[28 grams]~~ or more but less than 4 grams.

(d) An offense under Subsection (a) ~~[(c)]~~ is a felony of the second degree:

~~[(1) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed \$50,000;]~~ if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 4 ~~[28]~~ grams or more but less than 200 grams.

~~(e) An offense under Subsection (a) is a felony of the first degree~~:

~~[(2) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000;]~~ if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 400 ~~[200]~~ grams or more ~~[but less than 400 grams; and]~~

~~[(3) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 15 years, and a fine not to exceed \$250,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 400 grams or more].~~

Sec. 481.113. OFFENSE: MANUFACTURE OR DELIVERY OF SUBSTANCE IN PENALTY GROUP 2. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance listed in Penalty Group 2.

(b) An offense under Subsection (a) is a state jail felony ~~[of the second degree]~~ if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, less than one gram ~~[28 grams]~~.

(c) ~~An~~ ~~[A person commits an aggravated offense if the person commits an]~~ offense under Subsection (a) is a felony of the third degree if ~~[and]~~ the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, one gram ~~[28 grams]~~ or more but less than 4 grams.

(d) An offense under Subsection (a) ~~[(c)]~~ is a felony of the second degree:

~~[(1) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed \$50,000,] if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 4 [28] grams or more [but less than 400 grams; and~~

~~[(2) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 400 grams or more].~~

Sec. 481.114. OFFENSE: MANUFACTURE OR DELIVERY OF SUBSTANCE IN PENALTY GROUP 3 OR 4. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance listed in Penalty Group 3 or 4.

(b) An offense under Subsection (a) is a state jail felony ~~[of the third degree]~~ if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, less than 28 [200] grams.

(c) ~~An~~ A person commits an aggravated offense if the person commits an offense under Subsection (a) is a felony of the second degree if [and] the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 28 [200] grams or more.

~~[(d) An offense under Subsection (c) is:~~

~~[(1) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed \$50,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 200 grams or more but less than 400 grams; and~~

~~[(2) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including any adulterants or dilutants, 400 grams or more.]~~

Sec. 481.115. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 1. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally possesses a controlled substance listed in Penalty Group 1, unless the person obtained the substance directly from or under a valid prescription or order of a practitioner acting in the course of professional practice.

(b) An offense under Subsection (a) is a state jail felony ~~[of the second degree]~~ if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, less than one gram [28 grams].

(c) ~~An~~ A person commits an aggravated offense if the person commits an offense under Subsection (a) is a felony of the third degree if [and]

the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, one gram [28 grams] or more but less than 4 grams.

(d) An offense under Subsection (a) [(c)] is a felony of the second degree:

~~[(1) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed \$50,000;]~~ if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 4 [28] grams or more ~~[but less than 400 grams; and~~

~~[(2) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 400 grams or more].~~

Sec. 481.116. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 2. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally possesses a controlled substance listed in Penalty Group 2, unless the person obtained the substance directly from or under a valid prescription or order of a practitioner acting in the course of professional practice.

(b) An offense under Subsection (a) is a state jail felony ~~[of the third degree]~~ if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, less than one gram [28 grams].

(c) ~~An~~ ~~[A person commits an aggravated offense if the person commits an]~~ offense under Subsection (a) is a felony of the third degree if [and] the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, one gram [28 grams] or more but less than 4 grams.

(d) An offense under Subsection (a) [(c)] is a felony of the second degree:

~~[(1) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed \$50,000;]~~ if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 4 [28] grams or more ~~[but less than 400 grams; and~~

~~[(2) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 400 grams or more].~~

Sec. 481.117. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 3. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally possesses a controlled substance listed in Penalty Group 3, unless the person obtains the substance directly from or under a valid prescription or order of a practitioner acting in the course of professional practice.



(b) An offense under Subsection (a) is a Class A misdemeanor if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, less than ~~28~~ [200] grams.

(c) ~~An~~ [A person commits an aggravated offense if the person commits an] offense under Subsection (a) ~~is a felony of the second degree if~~ [and] the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, ~~28~~ [200] grams or more.

~~[(d) An offense under Subsection (c) is:~~

~~[(1) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed \$50,000, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 200 grams or more but less than 400 grams; and~~

~~[(2) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 400 grams or more.]~~

Sec. 481.118. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 4. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally possesses a controlled substance listed in Penalty Group 4, unless the person obtained the substance directly from or under a valid prescription or order of a practitioner acting in the course of practice.

(b) An offense under Subsection (a) is a Class B misdemeanor if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, less than ~~28~~ [200] grams.

(c) ~~An~~ [A person commits an aggravated offense if the person commits an] offense under Subsection (a) ~~is a felony of the second degree if~~ [and] the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, ~~28~~ [200] grams or more.

~~[(d) An offense under Subsection (c) is:~~

~~[(1) punishable by confinement in the Texas Department of Corrections for life or a term of not more than 99 years or less than 5 years, and a fine not to exceed \$50,000, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 200 grams or more but less than 400 grams; and~~

~~[(2) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 400 grams or more.]~~

Sec. 481.120. OFFENSE: DELIVERY OF MARIHUANA. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally delivers marihuana.

(b) An offense under Subsection (a) is:

(1) a Class B misdemeanor if the amount of marihuana delivered is one-fourth ounce or less and the person committing the offense does not receive remuneration for the marihuana;

(2) a Class A misdemeanor if the amount of marihuana delivered is one-fourth ounce or less and the person committing the offense receives remuneration for the marihuana;

(3) a state jail felony ~~[of the third degree]~~ if the amount of marihuana delivered is five pounds ~~[four ounces]~~ or less but more than one-fourth ounce;

(4) a felony of the third ~~[second]~~ degree if the amount of marihuana delivered is 50 ~~[five]~~ pounds or less but more than five pounds ~~[four ounces]~~; ~~[and]~~

(5) a felony of the second ~~[first]~~ degree if the amount of marihuana delivered is 2,000 ~~[50]~~ pounds or less but more than 50 ~~[5]~~ pounds; ~~and[-]~~

(6) a felony of the first degree

~~[(c) A person commits an aggravated offense if the person commits an offense under Subsection (a) and the amount of marihuana delivered is more than 50 pounds.~~

~~[(d) An offense under Subsection (c) is:~~

~~[(1) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed \$50,000, if the amount of marihuana delivered is 200 pounds or less but more than 50 pounds;~~

~~[(2) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of marihuana delivered is 2,000 pounds or less but more than 200 pounds; and~~

~~[(3) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 15 years, and a fine not to exceed \$250,000,] if the amount of marihuana delivered is more than 2,000 pounds.~~

Sec. 481.121. OFFENSE: POSSESSION OF MARIHUANA. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally possesses a usable quantity of marihuana.

(b) An offense under Subsection (a) is:

(1) a Class B misdemeanor if the amount of marihuana possessed is two ounces or less;

(2) a Class A misdemeanor if the amount of marihuana possessed is four ounces or less but more than two ounces;

(3) a state jail felony ~~[of the third degree]~~ if the amount of marihuana possessed is five pounds or less but more than four ounces; ~~[and]~~

(4) a felony of the third ~~[second]~~ degree if the amount of marihuana possessed is 50 pounds or less but more than 5 pounds; ~~[-]~~

(5) a felony of the second degree if

~~[(c) A person commits an aggravated offense if the person commits an offense under Subsection (a) and] the amount of marihuana possessed is 2,000 pounds or less but more than 50 pounds; and[-]~~

(6) a felony of the first degree

~~[(d) An offense under Subsection (c) is:~~

~~[(1) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed \$50,000, if the amount of marihuana possessed is 200 pounds or less but more than 50 pounds;~~

~~[(2) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of marihuana possessed is 2,000 pounds or less but more than 200 pounds; and~~

~~[(3) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 15 years, and a fine not to exceed \$250,000;] if the amount of marihuana possessed is more than 2,000 pounds.~~

~~[(c) An offense for which the punishment is prescribed by Subsection (b) may not be considered a crime of moral turpitude.]~~

Sec. 481.122. OFFENSE: DELIVERY OF CONTROLLED SUBSTANCE OR MARIHUANA TO MINOR. (a) Except as authorized by this chapter, a person commits an ~~[aggravated]~~ offense if the person knowingly or intentionally delivers a controlled substance listed in Penalty Group 1, 2, or 3 or knowingly or intentionally delivers marihuana and the person delivers the controlled substance or marihuana to a person:

- (1) who is 17 years of age or younger;
- (2) who the actor knows or believes intends to deliver the controlled substance or marihuana to a person 17 years of age or younger;
- (3) who is enrolled in an elementary or secondary school; or
- (4) who the actor knows or believes intends to deliver the controlled substance or marihuana to a person who is enrolled in an elementary or secondary school.

(b) It is an affirmative defense to prosecution under this section that:

(1) the actor was younger than 18 years of age when the offense was committed; or

(2) the actor was younger than 21 years of age when the offense was committed and delivered only marihuana in an amount less than one-fourth ounce for which the actor did not receive remuneration.

(c) An offense under this section is a felony of the second ~~[first]~~ degree.

Sec. 481.125. OFFENSE: POSSESSION OR DELIVERY OF DRUG PARAPHERNALIA. (a) A person commits an offense if the person knowingly or intentionally uses or possesses with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of this chapter or to inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter.

(b) A person commits an offense if the person knowingly or intentionally delivers, possesses with intent to deliver, or manufactures with intent to deliver drug paraphernalia knowing that the person who receives or who is intended to receive the drug paraphernalia intends that it be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack,

store, contain, or conceal a controlled substance in violation of this chapter or to inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter.

(c) A person commits an offense if the person commits an offense under Subsection (b), is 18 years of age or older, and the person who receives or who is intended to receive the drug paraphernalia is younger than 18 years of age and at least three years younger than the actor.

(d) An offense under Subsection (a) is a Class C misdemeanor~~[, unless it is shown on the trial of a defendant that the defendant has previously been convicted under Subsection (a), in which event the offense is a Class B misdemeanor]~~.

(e) An offense under Subsection (b) is a Class A misdemeanor, unless it is shown on the trial of a defendant that the defendant has previously been convicted under Subsection (b) or (c), in which event the offense is punishable by confinement in jail for a term of not more than one year or less than 90 days [a felony of the third degree].

(f) An offense under Subsection (c) is a state jail felony ~~[of the third degree]~~.

Sec. 481.126. OFFENSE: ILLEGAL EXPENDITURE OR INVESTMENT. (a) A person commits an offense if the person knowingly or intentionally:

(1) expends funds the person knows are derived from the commission of an offense;

(A) under Section 481.115(a) or 481.116(a) [481.112(c), 481.113(c), 481.114(c), 481.115(c), 481.116(c), 481.117(c), 481.118(c), 481.120(c), or 481.121(c)]; or

(B) punishable under Section 481.112(d), 481.112(e), 481.113(d), 481.114(c), 481.117(c), 481.118(c), 481.120(b)(5), 481.120(b)(6), 481.121(b)(5), or 481.121(b)(6); or

(2) finances or invests funds the person knows or believes are intended to further the commission of an offense listed in Subdivision (1) or an offense for which the punishment is listed under Subdivision (1).

(b) An offense under this section is a felony of the first degree [punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 5 years, and a fine of not more than \$1,000,000 or less than \$50,000].

Sec. 481.127. OFFENSE: UNAUTHORIZED DISCLOSURE OF INFORMATION. (a) A person commits an offense if the person intentionally or knowingly gives, permits, or obtains unauthorized access to information submitted to the Department of Public Safety under Section 481.075.

(b) An offense under this section is a state jail felony ~~[of the third degree]~~.

Sec. 481.128. OFFENSE AND CIVIL PENALTY: COMMERCIAL MATTERS. (a) A registrant or dispenser commits an offense if the registrant or dispenser knowingly or intentionally:

(1) distributes, delivers, administers, or dispenses a controlled substance in violation of Sections 481.070-481.074;

(2) manufactures a controlled substance not authorized by the person's registration or distributes or dispenses a controlled substance not authorized by the person's registration to another registrant or other person;

(3) refuses or fails to make, keep, or furnish a record, report, notification, order form, statement, invoice, or information required by this chapter;

(4) prints, manufactures, possesses, or produces a triplicate prescription form without the approval of the Department of Public Safety;

(5) delivers or possesses a counterfeit triplicate prescription;

(6) refuses an entry into a premise for an inspection authorized by this chapter;

(7) refuses or fails to return a triplicate prescription form as required by Section 481.075(h); or

(8) refuses or fails to make, keep, or furnish a record, report, notification, order form, statement, invoice, or information required by a rule adopted before June 1, 1991, by the director.

(b) If the registrant or dispenser knowingly or intentionally refuses or fails to make, keep, or furnish a record, report, notification, order form, statement, invoice, or information required by a rule or a rule amendment adopted on or after June 1, 1991, by the director, the registrant or dispenser is liable to the state for a civil penalty of not more than \$5,000 for each act.

(c) If the registrant or dispenser negligently fails to make, keep, or furnish a record, report, notification, order form, statement, invoice, or information required by a rule or a rule amendment adopted on or after June 1, 1991, by the director, the registrant or dispenser is liable to the state for a civil penalty of not more than \$1,000 for each act.

(d) An offense under Subsection (a) is a state jail felony ~~[of the second degree, unless it is shown on the trial of a defendant that the defendant has previously been convicted under Subsection (a), in which event the offense is a felony of the first degree].~~

(e) If a person negligently commits an act that would otherwise be an offense under Subsection (a), the person is liable to the state for a civil penalty of not less than \$5,000 or more than \$10,000 for each act.

(f) A district attorney of the county where the act occurred may file suit in district court in that county to collect a civil penalty under this section, or the district attorney of Travis County or the attorney general may file suit in district court in Travis County to collect the penalty.

Sec. 481.129. OFFENSE: FRAUD. (a) A person commits an offense if the person knowingly or intentionally:

(1) distributes as a registrant or dispenser a controlled substance listed in Schedule I or II, unless the person distributes the controlled substance under an order form as required by Section 481.069;

(2) uses in the course of manufacturing, prescribing, or distributing a controlled substance a registration number that is fictitious, revoked, suspended, or issued to another person;

(3) uses a triplicate prescription form issued to another person to prescribe a controlled substance;

(4) possesses or attempts to possess a controlled substance:  
(A) by misrepresentation, fraud, forgery, deception, or subterfuge;

(B) through use of a fraudulent prescription form; or  
(C) through use of a fraudulent oral or telephonically communicated prescription; or

(5) furnishes false or fraudulent material information in or omits material information from an application, report, record, or other document required to be kept or filed under this chapter.

(b) A person commits an offense if the person knowingly or intentionally:

(1) makes, distributes, or possesses a punch, die, plate, stone, or other thing designed to print, imprint, or reproduce an actual or simulated trademark, trade name, or other identifying mark, imprint, or device of another on a controlled substance or the container or label of a container for a controlled substance, so as to make the controlled substance a counterfeit substance; or

(2) manufactures, delivers, or possesses with intent to deliver a counterfeit substance.

(c) A person commits an offense if the person knowingly or intentionally:

(1) delivers a prescription or a prescription form for other than a valid medical purpose in the course of professional practice; or

(2) possesses a prescription for a controlled substance or a prescription form unless the prescription or prescription form is possessed:

(A) during the manufacturing or distribution process;

(B) by a practitioner, practitioner's agent, or an institutional practitioner for a valid medical purpose during the course of professional practice;

(C) by a pharmacist or agent of a pharmacy during the professional practice of pharmacy;

(D) under a practitioner's order made by the practitioner for a valid medical purpose in the course of professional practice; or

(E) by an officer or investigator authorized to enforce this chapter within the scope of the officer's or investigator's official duties.

(d) An offense under Subsection (a) is:

(1) a felony of the second degree if the controlled substance that is the subject of the offense is listed in Schedule I or II;

(2) a felony of the third degree if the controlled substance that is the subject of the offense is listed in Schedule III or IV; and

(3) a Class A misdemeanor if the controlled substance that is the subject of the offense is listed in Schedule V.

(e) An offense under Subsection (b) is a Class A misdemeanor.

(f) An offense under Subsection (c)(1) is:

(1) a felony of the second degree if the defendant delivers:

(A) a prescription form; or

(B) a prescription for a controlled substance listed in Schedule II; and

(2) a felony of the third degree if the defendant delivers a prescription for a controlled substance listed in Schedule III, IV, or V.

(g) An offense under Subsection (c)(2) is:

(1) a state jail felony [~~of the third degree~~] if the defendant possesses:

(A) a prescription form; or

(B) a prescription for a controlled substance listed in Schedule II or III; and

(2) a Class B misdemeanor if the defendant possesses a prescription for a controlled substance listed in Schedule IV or V.

Sec. 481.131. OFFENSE: DIVERSION OF CONTROLLED SUBSTANCE PROPERTY OR PLANT. (a) A person commits an offense if the person intentionally or knowingly:

(1) converts to the person's own use or benefit a controlled substance property or plant seized under Section 481.152 or 481.153; or

(2) diverts to the unlawful use or benefit of another person a controlled substance property or plant seized under Section 481.152 or 481.153.

(b) An offense under this section is a state jail felony [~~of the third degree~~].

SECTION 2.03. Section 482.002, Health and Safety Code, is amended to read as follows:

Sec. 482.002. UNLAWFUL DELIVERY OR MANUFACTURE WITH INTENT TO DELIVER; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly or intentionally manufactures with the intent to deliver or delivers a simulated controlled substance and the person:

(1) expressly represents the substance to be a controlled substance;

(2) represents the substance to be a controlled substance in a manner that would lead a reasonable person to believe that the substance is a controlled substance; or

(3) states to the person receiving or intended to receive the simulated controlled substance that the person may successfully represent the substance to be a controlled substance to a third party.

(b) It is a defense to prosecution under this section that the person manufacturing with the intent to deliver or delivering the simulated controlled substance was:

(1) acting in the discharge of the person's official duties as a peace officer;

(2) manufacturing the substance for or delivering the substance to a licensed medical practitioner for use as a placebo in the course of the practitioner's research or practice; or

(3) a licensed medical practitioner, pharmacist, or other person authorized to dispense or administer a controlled substance, and the person was acting in the legitimate performance of the person's professional duties.

(c) It is not a defense to prosecution under this section that the person manufacturing with the intent to deliver or delivering the simulated controlled substance believed the substance to be a controlled substance.

(d) An offense under this section is a state jail felony ~~(of the third degree)~~.

SECTION 2.04. Section 483.042, Health and Safety Code, is amended to read as follows:

Sec. 483.042. DELIVERY OR OFFER OF DELIVERY OF DANGEROUS DRUG. (a) A person commits an offense if the person delivers or offers to deliver a dangerous drug:

(1) unless:

(A) the dangerous drug is delivered or offered for delivery by a pharmacist under:

(i) a prescription issued by a practitioner described by Section 483.001(12)(A) or (B); or

(ii) an original written prescription issued by a practitioner described by Section 483.001(12)(C); and

(B) a label is attached to the immediate container in which the drug is delivered or offered to be delivered and the label contains the following information:

(i) the name and address of the pharmacy from which the drug is delivered or offered for delivery;

(ii) the date the prescription for the drug is dispensed;

(iii) the number of the prescription as filed in the prescription files of the pharmacy from which the prescription is dispensed;

(iv) the name of the practitioner who prescribed the drug;

(v) the name of the patient and, if the drug is prescribed for an animal, a statement of the species of the animal; and

(vi) directions for the use of the drug as contained in the prescription; or

(2) unless:

(A) the dangerous drug is delivered or offered for delivery by a practitioner in the course of practice; and

(B) a label is attached to the immediate container in which the drug is delivered or offered to be delivered and the label contains the following information:

(i) the name and address of the practitioner;

(ii) the date the drug is delivered;

(iii) the name of the patient and, if the drug is prescribed for an animal, a statement of the species of the animal; and

(iv) the name of the drug, the strength of the drug, and directions for the use of the drug.

(b) Subsection (a) does not apply to the delivery or offer for delivery of a dangerous drug to a person listed in Section 483.041(c) for use in the usual course of business or practice or in the performance of official duties by the person.

(c) Proof of an offer to sell a dangerous drug must be corroborated by a person other than the offeree or by evidence other than a statement by the offeree.



(d) An offense under this section is a state jail felony [~~of the third degree~~].

SECTION 2.05. Section 483.043, Health and Safety Code, is amended to read as follows:

Sec. 483.043. MANUFACTURE OF DANGEROUS DRUG. (a) A person commits an offense if the person manufactures a dangerous drug and the person is not authorized by law to manufacture the drug.

(b) An offense under this section is a state jail felony [~~of the third degree~~].

SECTION 2.06. Section 485.033, Health and Safety Code, is amended to read as follows:

Sec. 485.033. DELIVERY TO A MINOR. (a) A person commits an offense if the person intentionally, knowingly, or recklessly delivers abusable glue or aerosol paint to a person who is younger than 18 years of age.

(b) It is a defense to prosecution under this section that the abusable glue or aerosol paint that was delivered contains additive material that effectively discourages intentional abuse by inhalation or is in compliance with rules adopted by the commissioner under Section 485.011.

(c) It is an affirmative defense to prosecution under this section that:

(1) the person making the delivery is an adult having supervisory responsibility over the person younger than 18 years of age and:

(A) the adult permits the use of the abusable glue or aerosol paint only under the adult's direct supervision and in the adult's presence and only for its intended purpose; and

(B) the adult removes the substance from the person younger than 18 years of age on completion of that use; or

(2) the person to whom the abusable glue or aerosol paint was delivered presented to the defendant an apparently valid Texas driver's license or an identification card, issued by the Department of Public Safety of the State of Texas and containing a physical description consistent with the person's appearance, that purported to establish that the person was 18 years of age or older.

(d) Except as provided by Subsections (e) and (f), an offense under this section is a state jail felony [~~of the third degree~~].

(e) An offense under this section is a Class B misdemeanor if it is shown on the trial of the defendant that at the time of the delivery the defendant or the defendant's employer had a glue and paint sales permit for the location of the sale.

(f) An offense under this section is a Class A misdemeanor if it is shown on the trial of the defendant that at the time of the delivery the defendant or the defendant's employer:

(1) did not have a glue and paint sales permit but did have a sales tax permit for the location of the sale; and

(2) had not been convicted previously under this section for an offense committed after January 1, 1988.

SECTION 2.07. Sections 481.106 and 481.107, Health and Safety Code, are repealed.

SECTION 2.08. (a) The change in law made by this article applies only to an offense committed on or after the effective date of this article. For purposes of this section, an offense is committed before the effective date of this article if any element of the offense occurs before the effective date.

(b) An offense committed before the effective date of this article is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 2.09. This article takes effect on September 1, 1994.

### ARTICLE 3

SECTION 3.01. Article 13.25(a), Code of Criminal Procedure, is amended to read as follows:

(a) In this section "access," "computer," "computer network," "computer program," ~~[and]~~ "computer system," and "owner" have the meanings assigned to those terms in Section 33.01, Penal Code.

SECTION 3.02. Articles 14.03(a) and (d), Code of Criminal Procedure, are amended to read as follows:

(a) Any peace officer may arrest, without warrant:

(1) persons found in suspicious places and under circumstances which reasonably show that such persons have been guilty of some felony, violation of Title 9, Chapter 42, Penal Code, [or] breach of the peace or offense under Section 49.02, Penal Code, or threaten, or are about to commit some offense against the laws;

(2) persons who the peace officer has probable cause to believe have committed an assault resulting in bodily injury to another person and the peace officer has probable cause to believe that there is danger of further bodily injury to that person;

(3) persons who the peace officer has probable cause to believe have committed the offense defined by Section 25.08, Penal Code (violation of Protective Order), if the offense is not committed in the presence of the peace officer; or

(4) persons who the peace officer has probable cause to believe have committed an assault resulting in bodily injury to a member of the person's family or household.

(d) A peace officer who is outside his jurisdiction may arrest, without warrant, a person who commits an offense within the officer's presence or view, if the offense is a felony, ~~[or] a violation of Title 9, Chapter 42, Penal Code, a breach of the peace, or an offense under Section 49.02, Penal Code.~~ A peace officer making an arrest under this subsection shall, as soon as practicable after making the arrest, notify a law enforcement agency having jurisdiction where the arrest was made. The law enforcement agency shall then take custody of the person committing the offense and take the person before a magistrate in compliance with Article 14.06 of this code.

SECTION 3.03. Article 102.016(a), Code of Criminal Procedure, is amended to read as follows:

(a) A person convicted of an offense under Chapter 49 [Article 67011-1, Revised Statutes, Section 19.05(a)(2)], Penal Code, other than an offense punishable as a Class C misdemeanor, or of an offense

under the Texas Commercial Driver's License Act (Article 6687b-2, Revised Statutes), [or Section 31.097, Parks and Wildlife Code,] shall pay as court costs \$30, in addition to other court costs.

SECTION 3.04. Subsection (b), Article 102.081, Code of Criminal Procedure, is amended to read as follows:

(b) A person convicted of an offense under Chapter 49, Penal Code, other than an offense punishable as a Class C misdemeanor [Article 67011-1, Revised Statutes], shall pay as a cost of court \$25.

SECTION 3.05. Chapter 16, Code of Criminal Procedure, is amended by adding Article 16.22 to read as follows:

Art. 16.22. EXAMINATION AND TRANSFER OF SUSPECTED MENTALLY ILL OR RETARDED DEFENDANT. (a) If a sheriff provides to a magistrate evidence or a statement that establishes reasonable cause to believe that a defendant committed to the sheriff's custody is a person with mental illness or mental retardation and may constitute a danger to the defendant or others, the magistrate shall order an examination of the defendant under Section 3(b), Article 46.02, of this code and, if necessary, the transfer of the defendant to the nearest appropriate mental health or mental retardation facility in the manner provided by Section 3(b), Article 46.02, of this code.

(b) After the court receives the examining expert's report relating to the defendant under Section 3(d), Article 46.02, of this code, the court may resume the criminal proceedings against the defendant or further competency proceedings, if required, as provided by Article 46.02 of this code.

SECTION 3.06. Chapter 17, Code of Criminal Procedure, is amended by adding Article 17.032 to read as follows:

(4) magistrate determines, in consultation with a local mental health services provider, that appropriate mental health services for the defendant are available through the Texas Department of Mental Health and Mental Retardation under Section 534.053, Health and Safety Code, or through another mental health services provider.

(c) The magistrate shall require as a condition of release on personal bond under this article that the defendant submit to outpatient or inpatient mental health treatment if the defendant's:

(1) mental illness is chronic in nature; or

(2) ability to function independently will continue to deteriorate if the defendant is not treated.

(d) In addition to a condition of release imposed under Subsection (c) of this article, the magistrate may require the defendant to comply with other conditions that are reasonably necessary to protect the community.

(e) In this article, a person is considered to have been convicted of an offense if:

(1) a sentence is imposed;

(2) the person is placed on community supervision or receives deferred adjudication; or

(3) the court defers final disposition of the case.

SECTION 3.07. (a) The change in law made by this article applies only to an offense committed on or after the effective date of this article. For purposes of this section, an offense is committed before the effective date of this article if any element of the offense occurs before the effective date.

(b) An offense committed before the effective date of this article is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 3.08. This article takes effect on September 1, 1994.

#### ARTICLE 4

SECTION 4.01. Article 42.12, Code of Criminal Procedure, is amended to read as follows:

##### Art. 42.12. COMMUNITY SUPERVISION ~~[ADULT PROBATION]~~

Sec. 1. PURPOSE. It is the purpose of this article ~~[Article]~~ to place wholly within the state ~~[State]~~ courts ~~[of appropriate jurisdiction]~~ the responsibility for determining when the imposition of sentence in certain cases shall be suspended, the conditions of community supervision ~~[probation]~~, and the supervision of defendants placed on community supervision ~~[probationers]~~, in consonance with the powers assigned to the judicial branch of this government by the Constitution of Texas. It is the purpose of this article ~~[Article]~~ to remove from existing statutes the limitations, other than questions of constitutionality, that have acted as barriers to effective systems of community supervision ~~[probations]~~ in the public interest.

Sec. 2. DEFINITIONS. In this article ~~[Article]~~:

(1) "Court" means a court ~~["Courts" shall mean the courts]~~ of record having original criminal jurisdiction.

(2) "Community supervision" means ~~["Probation" shall mean]~~ the placement ~~[supervised release]~~ of a ~~[convicted]~~ defendant by a court under a continuum of programs and sanctions, with conditions imposed by the court for a specified period during which:

(A) criminal proceedings are deferred without an adjudication of guilt; or

(B) a sentence of imprisonment or confinement, imprisonment and fine, or confinement and fine, is probated and the imposition of sentence is suspended in whole or in part.

(3) "Supervision officer" means ~~["Probation officer" shall mean either]~~ a person ~~[duty]~~ appointed or employed under Section 4, Article 42.131 of this code ~~[by one or more courts of record having original criminal jurisdiction]~~ to supervise defendants placed on community supervision ~~[probation; or a person designated by such courts for such duties on a part-time basis]~~.

~~[(4) "Probationer" means a defendant who is on probation.]~~

Sec. 3. JUDGE ~~[COURT]~~ ORDERED COMMUNITY SUPERVISION ~~[PROBATION]~~. (a) A judge, in the best interest of justice, the public, and the defendant, after conviction or a plea of guilty or nolo contendere, may suspend the imposition of the sentence and place the defendant on community supervision or impose a fine applicable to the offense and place the defendant on community supervision.

(b) In a felony case the minimum period of community supervision is two years and the maximum period of community supervision is five years.

(c) The maximum period of community supervision in a misdemeanor case is two years.

(d) A judge may increase the maximum period of community supervision in the manner provided by Section 22(b) of this article.

(e) A defendant is not eligible for community supervision under this section if the defendant:

(1) is convicted of or enters a plea of guilty or nolo contendere to capital murder;

(2) is sentenced to serve a term of confinement under Section 12.35, Penal Code; or

(3) does not file a sworn motion under Subsection (f) of this section or for whom the judge does not enter in the verdict a finding that the information contained in the motion is true.

(f) A defendant is eligible for community supervision under this section only if before the trial begins the defendant files a written sworn motion with the judge that the defendant has not previously been convicted of two or more felonies in this or any other state, or if the defendant is charged with a first degree felony or murder, that the defendant has not been previously convicted of any felony in this or any other state, and the judge enters in the verdict a finding that the information in the defendant's motion is true. [The judges of the courts of the State of Texas having original jurisdiction of criminal actions, when it shall appear to the satisfaction of the court that the ends of justice and the best interests of the public as well as the defendant will be subserved thereby, shall have the power, after conviction or a plea of guilty or nolo contendere for any crime or offense, where the maximum punishment assessed against the defendant does not exceed ten years imprisonment, to suspend the imposition of the sentence and may place the defendant on probation or impose a fine applicable to the offense committed and also place the defendant on probation as hereinafter provided. Except as otherwise provided by this section, in all felony cases where the punishment is assessed by the Court it may fix the period of probation without regard to the term of punishment assessed, but in no event may the period of probation be greater than 10 years or less than the minimum prescribed for the offense for which the defendant was convicted. In a misdemeanor case in which confinement is imposed by the court or in a third-degree felony case punished under Section 12.34(a)(2), Penal Code, the period of probation shall be for a period of time not to exceed the maximum confinement applicable to the offense or two years, whichever period is greater. Any such person placed on probation, whether in a trial by jury or before the court, shall be under the supervision of such court.

[Sec. 3g. LIMITATION ON COURT ORDERED PROBATION. (a) The provisions of Section 3 of this article do not apply:

(1) to a defendant adjudged guilty of an offense defined by the following sections of the Penal Code:

[(A) Section 19.03 (Capital murder);

- ~~[(D) Section 20.04 (Aggravated kidnapping);~~
- ~~[(E) Section 22.021 (Aggravated sexual assault);~~
- ~~[(F) Section 29.03 (Aggravated robbery); or~~

~~[(2) to a defendant when it is shown that a deadly weapon as defined in Section 1.07(a)(11), Penal Code, was used or exhibited during the commission of a felony offense or during immediate flight therefrom, and that the defendant used or exhibited a deadly weapon or was a party to the offense and knew that a deadly weapon would be used or exhibited. On an affirmative finding under this subdivision, the trial court shall enter the finding in the judgment of the court. On an affirmative finding that the deadly weapon was a firearm, the court shall enter that finding in its judgment.~~

~~[(b) If there is an affirmative finding under Subsection (a)(2) in the trial of a felony of the second degree or higher that the deadly weapon used or exhibited was a firearm and the defendant is granted probation, the court may order the defendant confined in the institutional division of the Texas Department of Criminal Justice for not less than 60 and not more than 120 days. At any time after the defendant has served 60 days in the custody of the institutional division, the sentencing judge, on his own motion or on motion of the defendant, may order the defendant released to probation. The institutional division shall release the defendant to probation after he has served 120 days.]~~

Sec. 4. JURY RECOMMENDED COMMUNITY SUPERVISION [PROBATION]. (a) A jury that imposes confinement as punishment for an offense may recommend to the judge that the judge suspend the imposition of the sentence and place the defendant on community supervision. A judge shall suspend the imposition of the sentence and place the defendant on community supervision if the jury makes that recommendation in the verdict.

(b) If the jury recommends to the judge that the judge place the defendant on community supervision, the judge shall place the defendant on community supervision for any period permitted under Section 3(b) or 3(c) of this article, as appropriate.

(c) A judge may increase the maximum period of community supervision in the manner provided by Section 22(b) of this article.

(d) A defendant is not eligible for community supervision under this section if the defendant:

(1) is convicted of capital murder;

(2) is sentenced to serve a term of confinement under Section 12.35, Penal Code; or

(3) does not file a sworn motion under Subsection (e) of this section or for whom the jury does not enter in the verdict a finding that the information contained in the motion is true.

(e) A defendant is eligible for community supervision under this section only if before the trial begins the defendant files a written sworn motion with the judge that the defendant has not previously been convicted of a felony in this or any other state, and the jury enters in the verdict a finding that the information in the defendant's motion is true. [When there is a felony conviction in any court of this State and the punishment

~~assessed by the jury shall not exceed ten years, the jury may recommend probation for a period of any term of years authorized for the offense for which the defendant was convicted, but in no event for more than ten years, upon written sworn motion made therefor by the defendant, filed before the trial begins. When the jury recommends probation, it may also assess a fine applicable to the offense for which the defendant was convicted. When the trial is to a jury, and the defendant has no counsel, the court shall inform the defendant of his right to make such motion, and the court shall appoint counsel to prepare and present same, if desired by the defendant. In no case shall probation be recommended by the jury except when the sworn motion and proof shall show, and the jury shall find in their verdict that the defendant has never before been convicted of a felony in this or any other State. This law is not to be construed as preventing the jury from passing on the guilt of the defendant, but he may enter a plea of not guilty. In all eligible cases, probation shall be granted by the court, if the jury recommends it in their verdict, for the period recommended by the jury. This section does not apply to a defendant adjudged guilty of an offense under Section 481.122, Texas Controlled Substances Act (Chapter 481, Health and Safety Code), if it is shown on the trial of the offense that the defendant was 21 years of age or older at the time the offense was committed by his own conduct.~~

~~[(b) Where there is a misdemeanor conviction in any court of this state and the punishment assessed by the jury shall be by imprisonment in jail or by a fine or by both such fine and imprisonment, the jury may recommend probation for a period of time not to exceed two years, upon sworn motion made therefor by the defendant, filed before the penalty stage of the trial begins. When the jury recommends probation, it may recommend that the imprisonment or fine or both such fine and imprisonment found in its verdict may be probated. When the trial is to a jury and the defendant has no counsel, the court shall inform the defendant of his right to make such motion, and the court shall appoint counsel to prepare and present same, if desired by the defendant. In no case shall probation be recommended by the jury except when the defendant, before the trial began, had filed a sworn statement that the defendant has never before been convicted of a felony, and after conviction and before the penalty stage of the trial began, the defendant shall have filed a sworn motion for probation and the proof shall show and the jury shall find in their verdict that the defendant has never before been convicted of a felony in this or any other state. This law is not to be construed as preventing the jury from passing on the guilt of the defendant, but the defendant may enter a plea of not guilty. In all eligible cases, probation shall be granted by the court, if the jury recommends it in their verdict.~~

~~[(c) This section does not prohibit a court from granting probation in a case if the jury in the case does not recommend probation.]~~

Sec. 5. DEFERRED ADJUDICATION; Community Supervision. (a) Except as provided by Subsection (d) of this section, when in its opinion the best interest of society and the defendant will be served, the judge [court] may, after receiving a plea of guilty or plea of nolo contendere,

hearing the evidence, and finding that it substantiates the defendant's guilt, defer further proceedings without entering an adjudication of guilt, and place the defendant on community supervision [probation]. The judge [court] shall inform the defendant orally or in writing of the possible consequences under Subsection (b) of this section of a violation of community supervision [probation]. If the information is provided orally, the judge [court] must record and maintain the judge's [court's] statement to the defendant. In a felony case, the period of community supervision [probation] may not exceed five [10] years. In a misdemeanor case, the period of community supervision [probation] may not exceed two years. A judge may increase the maximum period of community supervision in the manner provided by Section 22(b) of this article. The judge [court] may impose a fine applicable to the offense and require any reasonable [terms and] conditions of community supervision that a judge could impose on a defendant placed on community supervision for a conviction that was probated and suspended, including confinement [probation]. However, upon written motion of the defendant requesting final adjudication filed within 30 days after entering such plea and the deferment of adjudication, the judge [court] shall proceed to final adjudication as in all other cases.

(b) On violation of a condition of community supervision [probation] imposed under Subsection (a) of this section, the defendant may be arrested and detained as provided in Section 21 [24] of this article [Article]. The defendant is entitled to a hearing limited to the determination by the court of whether it proceeds with an adjudication of guilt on the original charge. No appeal may be taken from this determination. After an adjudication of guilt, all proceedings, including assessment of punishment, pronouncement of sentence, granting of community supervision [probation], and defendant's appeal continue as if the adjudication of guilt had not been deferred.

(c) On expiration of a community supervision [probationary] period imposed under Subsection (a) of this section, if the judge [court] has not proceeded to adjudication of guilt, the judge [court] shall dismiss the proceedings against the defendant and discharge him. The judge [court] may dismiss the proceedings and discharge the defendant prior to the expiration of the term of community supervision [probation] if in the judge's [its] opinion the best interest of society and the defendant will be served. A dismissal and discharge under this section may not be deemed a conviction for the purposes of disqualifications or disabilities imposed by law for conviction of an offense, except that:

(1) upon conviction of a subsequent offense, the fact that the defendant had previously received community supervision with a deferred adjudication of guilt [probation] shall be admissible before the court or jury to be considered on the issue of penalty; and

(2) if the defendant is an applicant for a license or is a licensee under Chapter 42, Human Resources Code, the Texas Department of Human Services may consider the fact that the defendant previously has received community supervision with a deferred adjudication of guilt [probation] under this section in issuing, renewing, denying, or revoking a license under that chapter.



(d) In all other cases the judge may grant deferred adjudication unless the defendant:

(1) has previously received deferred adjudication for a felony offense;

(2) is charged with a misdemeanor offense and has previously received deferred adjudication for a misdemeanor offense;

(3) is charged with an offense under Section 49.04, 49.05, 49.06, 49.07, or 49.08, Penal Code; or

(4) is charged with a person offense punishable as a second degree felony or higher.

(e) In this section, a defendant has previously received deferred adjudication community supervision if the placement on deferred adjudication community supervision occurred before the commission of the instant offense. [This section does not apply to a defendant charged with an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, an offense under Sections 481.107(b) through (c), 481.122, or 481.126, Health and Safety Code, an offense under Article 67011-1, Revised Statutes, an offense under Section 34, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), an offense under Section 32(c), Texas Motor Vehicle Safety Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes), or an offense under Section 10, Texas Commercial Driver's License Act (Article 6687b-2, Revised Statutes).]

#### Sec. 6. CONTINUING COURT JURISDICTION IN FELONY CASES.

(a) For the purposes of this section, the jurisdiction of a court in which a sentence requiring imprisonment [~~confinement~~] in the institutional division of the Texas Department of Criminal Justice [~~Corrections~~] is imposed by the judge of the court shall continue for 180 days from the date the execution of the sentence actually begins. Before the expiration of 180 days from the date the execution of the sentence actually begins, the judge of the court that imposed such sentence may on his own motion, on the motion of the attorney representing the state, or on the written motion of the defendant, suspend further execution of the sentence and place the defendant on community supervision [~~probation~~] under the terms and conditions of this article, if in the opinion of the judge the defendant would not benefit from further imprisonment [~~incarceration~~] and[:

[(1)] the defendant is otherwise eligible for community supervision [~~probation~~] under Section 3 of this article;

[(2)] the defendant had never before been incarcerated in a penitentiary serving a sentence for a felony; and

[(3)] the offense for which the defendant was convicted was other than those defined by Section 19.02, 20.04, 22.021, 22.03, 22.04(a)(1), (2), or (3), 29.03, 36.02, 38.07, 71.02 or a felony of the second degree under Section 38.10, Penal Code].

(b) [If a court imposes a sentence under Section 12.34(a)(2), Penal Code, the period of time during which the court may suspend further execution of the sentence and place the defendant on probation runs from the 60th day after the date of sentencing until the date the sentence expires.

~~[(e)]~~ When the defendant or the attorney representing the state files a written motion requesting suspension by the judge ~~[court]~~ of further execution of the sentence and placement of the defendant on community supervision ~~[probation]~~, and when requested to do so by the judge ~~[court]~~, the clerk of the court shall request a copy of the defendant's record while imprisoned ~~[incarcerated]~~ from the institutional division of the Texas Department of Criminal Justice ~~[Corrections]~~ or, if the defendant is confined ~~[incarcerated]~~ in county jail, from the sheriff. Upon receipt of such request, the institutional division of the Texas Department of Criminal Justice ~~[Corrections]~~ or the sheriff shall forward to the judge ~~[court]~~, as soon as possible, a full and complete copy of the defendant's record while imprisoned or confined ~~[incarcerated]~~. When the defendant files a written motion requesting suspension of further execution of the sentence and placement on community supervision ~~[probation]~~, he shall immediately deliver or cause to be delivered a true and correct copy of the motion to the office of the attorney representing the state.

~~(c) [(d)]~~ The judge ~~[court]~~ may deny the motion without a hearing but may not grant the motion without holding a hearing and providing the attorney representing the state and the defendant the opportunity to present evidence on the motion.

~~[(c)] If a court imposes punishment under Section 12.422, Penal Code, the jurisdiction of the court continues until the 30th day after the date the defendant is released from a substance abuse facility, for the purpose of allowing the court to place the defendant on probation under this article. A court may place the defendant on probation under this subsection on its own motion or on the motion of any party. If probation is imposed, the period of probation may not exceed the term of years imposed under Section 12.422(a)(2), Penal Code, and the court must impose as a condition of probation that the defendant participate in a drug or alcohol abuse after-care program. If the court does not impose probation on the defendant within the time permitted under this subsection, the punishment under Section 12.422(a)(2), Penal Code, is automatically discharged.]~~

Sec. 7. CONTINUING COURT JURISDICTION IN MISDEMEANOR CASES. (a) For the purposes of this section, the jurisdiction of the courts in this state in which a sentence requiring confinement in a jail is imposed for conviction of a misdemeanor shall continue for 180 days from the date the execution of the sentence actually begins ~~[a period equal to the sentence imposed]~~. The judge of the court that imposed such sentence may on his own motion, on the motion of the attorney representing the state, or on the written motion of the defendant suspend further execution of the sentence and place the defendant on community supervision ~~[probation]~~ under the terms and conditions of this article, if ~~[prior to the execution of that sentence the defendant had never been incarcerated in a penitentiary or jail serving a sentence for a felony or misdemeanor and]~~ in the opinion of the judge the defendant would not benefit from further confinement ~~[incarceration]~~.

(b) When the defendant files a written motion with the court requesting suspension of further execution of the sentence and placement on community supervision ~~[probation]~~ or when requested to do so by the

judge, the clerk of the court shall request a copy of the defendant's record while confined ~~[incarcerated]~~ from the agency operating the jail where the defendant is confined ~~[incarcerated]~~. Upon receipt of such request, the agency operating the jail where the defendant is confined ~~[incarcerated]~~ shall forward to the court as soon as possible a full and complete copy of the defendant's record while confined ~~[incarcerated]~~.

(c) The judge ~~[court]~~ may deny the motion without a hearing but may not grant a motion without holding a hearing and allowing the attorney representing the state and the defendant to present evidence in the case.

Sec. 8. State Boot Camp Program ~~[ALTERNATIVE INCARCERATION PROBATION]~~. (a) For the purposes of this section, the jurisdiction of a court in which a sentence requiring imprisonment ~~[confinement]~~ in the institutional division of the Texas Department of Criminal Justice is imposed for conviction of a felony shall continue for 90 days from the date on which the convicted person is received into custody by the institutional division. After the expiration of 75 days but prior to the expiration of 90 days from the date on which the convicted person is received into custody by the institutional division, the judge of the court that imposed the sentence may suspend further execution of the sentence imposed and place the person on community supervision ~~[probation]~~ under the terms and conditions of this article, if in the opinion of the judge the person would not benefit from further imprisonment ~~[incarceration in a penitentiary]~~. The court shall clearly indicate in its order recommending the placement of the person in the state boot camp ~~[alternative incarceration]~~ program that the court is not retaining jurisdiction over the person for the purposes of Section 6 of this article. A court may recommend a person for placement in the state boot camp ~~[alternative incarceration]~~ program only if:

(1) the person is otherwise eligible for community supervision ~~[probation]~~ under this article;

(2) the person is 17 years of age or older but younger than 26 years and is physically and mentally capable of participating in a program ~~[does not have a physical or mental handicap]~~ that requires ~~[precludes]~~ strenuous physical activity; and

(3) the person is not convicted of an offense punishable as a state jail felony ~~[had never before been incarcerated in a federal penitentiary or penitentiary of this or any other state or has never been paroled from a county or municipal jail while awaiting transfer to a penitentiary]~~.

(b) On the 76th day after the day on which the convicted person is received into custody by the institutional division, the institutional division shall send the convicting court the record of the person's progress, conduct, and conformity to institutional division rules.

(c) The judge's ~~[court's]~~ recommendation that a person be placed in the state boot camp ~~[an alternative incarceration]~~ program created under Section 499.052, Government Code, does not give the court the power to hold the Texas Department of Criminal Justice or any officer or employee of the department in contempt of court for failure to adhere to that recommendation.

Sec. 9. PRESENTENCE INVESTIGATIONS. (a) Before the imposition of sentence by a judge [~~the court~~] in a felony case, and except as provided by Subsection (b) of this section, before the imposition of sentence by a judge [~~the court~~] in a misdemeanor case the judge [~~court~~] shall direct a supervision [~~probation~~] officer to report to the judge [~~court~~] in writing on the circumstances of the offense with which the defendant is charged, the amount of restitution necessary to adequately compensate a victim of the offense, the criminal and social history of the defendant, and any other information relating to the defendant or the offense requested by the judge [~~court~~]. It is not necessary that the report contain a sentencing recommendation, but the report must contain a proposed client supervision plan describing programs and sanctions that the community supervision and corrections department would provide the defendant if the defendant were placed on community supervision [~~granted probation~~].

(b) The judge [~~court~~] is not required to direct a supervision [~~probation~~] officer to prepare a report in a misdemeanor case if:

(1) the defendant requests that a report not be made and the judge [~~court~~] agrees to the request; or

(2) the judge [~~court~~] finds that there is sufficient information in the record to permit the meaningful exercise of sentencing discretion and the judge [~~court~~] explains this finding on the record.

(c) The judge [~~court~~] may not inspect a report and the contents of the report may not be disclosed to any person unless:

(1) the defendant pleads guilty or nolo contendere or is convicted of the offense; or

(2) the defendant, in writing, authorizes the judge to inspect the report.

(d) Before sentencing a defendant, the judge [~~court~~] shall permit the defendant or his counsel to read the presentence report.

(e) The judge [~~court~~] shall allow the defendant or his attorney to comment on the report and, with the approval of the judge [~~court~~], introduce testimony or other information alleging a factual inaccuracy in the report.

(f) The judge [~~court~~] shall allow the attorney representing the state access to any information made available to the defendant under this section.

(g) The supervision [~~probation~~] officer making a report under this section shall send a copy of the report to an institution to which the defendant is committed.

(h) On a determination by the judge [~~court~~] that alcohol or drug abuse may have contributed to the commission of the offense, the judge [~~court~~] shall direct a supervision [~~probation~~] officer approved by the community supervision and corrections [~~probation~~] department or the judge [~~court~~] or a person, program, or other agency approved by the Texas Commission on Alcohol and Drug Abuse, to conduct an evaluation to determine the appropriateness of, and a course of conduct necessary for, alcohol or drug rehabilitation for a defendant and to report that evaluation to the judge [~~court~~]. The evaluation shall be made:

(1) after arrest and before conviction, if requested by the defendant;

(2) after conviction and before sentencing, if the judge [court] assesses punishment in the case;

(3) after sentencing and before the entry of a final judgment, if the jury assesses punishment in the case; or

(4) after community supervision [probation] is granted, if the evaluation is required as a condition of community supervision [probation] under Section 13 of this article.

(i) A presentence investigation conducted on any defendant [offender] convicted of a felony offense who appears to the judge [court] through its own observation or on suggestion of a party to have a mental impairment shall include a psychological evaluation which determines, at a minimum, the defendant's IQ and adaptive behavior score. The results of the evaluation shall be included in the report to the judge [court] as required by Subsection (a) of this section.

(j) The judge [court] by order may direct that any information and records that are not privileged and that are relevant to the report required by Subsection (a) of this section be released to the officer conducting the presentence investigation under Subsection (i) of this section. The judge [court] may also issue a subpoena to obtain that information. The report and all information obtained in connection with the presentence investigation are confidential and may be released only to those persons and under those circumstances authorized under Subsections (d), (e), (f), and (g) of this section and as directed by the judge [court] for the effective supervision of the defendant. Medical and psychiatric records obtained by court order shall be kept separate from the defendant's community supervision [probation] file and may be released only by order of the judge [court].

Sec. 10. AUTHORITY TO IMPOSE, MODIFY, OR REVOKE COMMUNITY SUPERVISION [PROBATION]. (a) Only the court in which the defendant was tried may grant community supervision [probation], impose conditions, revoke the community supervision [probation], or discharge the defendant, unless the court has transferred jurisdiction of the case to another court with the latter's consent. Except as provided by Subsection (d) of this section, only the court may alter conditions of community supervision [probation]. In a felony case, only the judge who originally sentenced the defendant may suspend execution thereof and place the defendant under community supervision [probation] pursuant to Section 6 of this article. ~~If [except that if]~~ the judge who originally sentenced the defendant is deceased or disabled or if the office is vacant and the judge who originally sentenced the defendant is deceased or disabled or if the office is vacant and a motion is filed in accordance with Section 6 of this article, the clerk of the court shall promptly forward a copy of the motion to the presiding judge of the administrative judicial district for that court, who may deny the motion without a hearing or appoint a judge to hold a hearing on the motion.

(b) After a defendant has been placed on community supervision [probation], jurisdiction of the case may be transferred to a court of the

same rank in this ~~state~~ [State] having geographical jurisdiction where the defendant is residing or where a violation of the conditions of community supervision [probation] occurs. Upon transfer, the clerk of the court of original jurisdiction shall forward a transcript of such portions of the record as the transferring judge shall direct to the court accepting jurisdiction, which latter court shall thereafter proceed as if the trial and conviction had occurred in that court.

(c) Any judge of a court having geographical jurisdiction where the defendant is residing or where a violation of the conditions of community supervision [probation] occurs may issue a warrant for his arrest, but the determination of action to be taken after arrest shall be only by the judge of the court having jurisdiction of the case at the time the action is taken.

(d) A judge [court] that places a defendant on community supervision [probation] may authorize the supervision [probation] officer supervising the defendant [probationer] or a magistrate appointed by the district courts in the county that give preference to criminal cases to modify the conditions of community supervision [probation] for the limited purpose of transferring the defendant [probationer] to different programs within the community supervision continuum of programs and sanctions [probation program].

(e) If a supervision [probation] officer or magistrate modifies the conditions of community supervision [probation], the [probation] officer or magistrate shall deliver a copy of the modified conditions to the defendant [probationer], shall file a copy of the modified conditions with the sentencing court, and shall note the date of delivery of the copy in the defendant's [probationer's] file. If the defendant [probationer] agrees to the modification in writing, the [probation] officer or magistrate shall file a copy of the modified conditions with the district clerk and the conditions shall be enforced as modified. If the defendant [probationer] does not agree to the modification in writing, the supervision [probation] officer or magistrate shall refer the case to the judge of the court for modification [by the judge] in the manner provided by Section 22 [24] of this article.

~~[(j-3) The judges of the county courts at law in Hidalgo County shall participate in the management of the probation department serving the county, and for that purpose have the same duties and powers imposed by this section as do the district judges trying criminal cases in the county. The probation department may obtain criminal history record information (CHRI) relating to an applicant for employment with the department that is maintained by the Department of Public Safety, the Federal Bureau of Investigation identification division, or any other law enforcement agency. The information obtained under this subsection is for the exclusive use of the department and is privileged and confidential. The information may not be released or otherwise disclosed except on court order or consent of the applicant.]~~

~~[Sec. 10A. (j) Except as provided in Subsection (k) of this section on satisfactory completion by a probationer of the required amount of community service restitution work and full payment of restitution as ordered by the court, if the court has not proceeded to adjudication of guilt, the court shall dismiss the proceedings against the defendant and~~

discharge him. A dismissal and discharge under this section may not be deemed a conviction for the purposes of disqualifications or disabilities imposed by law for conviction of an offense, except that:

~~[(1) on conviction of a subsequent offense the fact that the defendant previously received community service probation is admissible on the issue of penalty; and~~

~~[(2) if the defendant is an applicant for a license or is a licensee under Chapter 42, Human Resources Code, the Texas Department of Human Services may consider the fact that the defendant previously has received probation under this section in issuing, renewing, denying, or revoking a license under that chapter.~~

~~[Sec. 10B. EL PASO COUNTY PRETRIAL DIVERSION PROGRAM.~~

~~(a) As a condition for a defendant to enter any pretrial diversion program or the functional equivalent that may be operated in El Paso County by the West Texas Regional Adult Probation Department or a county or district attorney of El Paso County, a defendant must file in the court in which the charges are pending a sworn waiver of speedy trial motion requesting the court to approve without a hearing the defendant's waiver of his speedy trial rights under the constitution and other law. If the court approves the waiver, the defendant is eligible for consideration for acceptance into a pretrial diversion program or equivalent program.~~

~~[(b) At the time the motion to waive speedy trial rights required by Subsection (a) of this section is filed, the court clerk shall collect a \$125 filing fee unless the court for good cause or otherwise waives the fee or any part of the fee under guidelines that may be set by the El Paso Council of Judges. The filing fee is nonrefundable.~~

~~[(c) The fees collected by the court clerk under Subsection (b) of this section shall be deposited in the general fund of the county treasury as provided by Chapter 113, Local Government Code.]~~

Sec. 11. BASIC CONDITIONS OF COMMUNITY SUPERVISION [PROBATION]. (a) The judge of the court having jurisdiction of the case shall determine the [terms and] conditions of community supervision [probation] and may, at any time, during the period of community supervision [probation] alter or modify the conditions as provided by Sections 10 and 22 of this article; ~~provided, however, that the clerk of the court shall furnish a copy of such terms and conditions to the probationer, and shall note the date of delivery of such copy on the docket~~. The judge may impose any reasonable condition that is designed to protect or restore the community, protect or restore the victim, or punish, rehabilitate, or reform the defendant. Conditions [Terms and conditions] of community supervision [probation] may include, but shall not be limited to, the conditions that the defendant [probationer] shall:

(1) Commit no offense against the laws of this State or of any other State or of the United States;

(2) Avoid injurious or vicious habits;

(3) Avoid persons or places of disreputable or harmful character;

(4) Report to the supervision [probation] officer as directed by the judge or supervision [probation] officer and obey all rules and regulations of the community supervision and corrections [probation] department;

(5) Permit the supervision [~~probation~~] officer to visit him at his home or elsewhere;

(6) Work faithfully at suitable employment as far as possible;

(7) Remain within a specified place;

(8) Pay his fine, if one be assessed, and all court costs whether a fine be assessed or not, in one or several sums, and make restitution or reparation in any sum that the judge [~~court~~] shall determine;

(9) Support his dependents;

(10) Participate, for a time specified by the judge [~~court~~] in any community-based program, including a community-service work program under Section 16 of this article [~~designated by the court~~];

(11) Reimburse the county in which the prosecution was instituted for compensation paid to appointed counsel for defending him in the case, if counsel was appointed, or if he was represented by a county-paid public defender, in an amount that would have been paid to an appointed attorney had the county not had a public defender;

(12) Remain under custodial supervision in a community corrections [~~community-based~~] facility, obey all rules and regulations of such facility, and pay a percentage of his income to the facility for room and board;

(13) Pay a percentage of his income to his dependents for their support while under custodial supervision [~~suspension~~] in a community corrections [~~community-based~~] facility;

(14) Pay a percentage of his income to the victim of the offense, if any, to compensate the victim for any property damage or medical expenses sustained by the victim as a direct result of the commission of the offense;

(15) Submit to testing for alcohol or controlled substances;

(16) Attend counseling sessions for substance abusers or participate in substance abuse treatment services in a program or facility approved or licensed by the Texas Commission on Alcohol and Drug Abuse; ~~if the person was sentenced for an offense involving controlled substances or the court determines that the defendant's use of controlled substances was connected to the commission of the offense~~;

(17) Register under Article 6252-13c.1, Revised Statutes; ~~and~~

(18) With the consent of the victim of a misdemeanor offense or of any offense under Title 7, Penal Code, participate in victim-defendant mediation for the purpose of making restitution to the victim;

(19) Submit to electronic monitoring;

(20) Reimburse the crime victims compensation fund created under the Crime Victims Compensation Act (Article 8309-1, Vernon's Texas Civil Statutes) for any amounts paid from that fund to a victim, as defined by Article 56.01 of this code, of the defendant's offense;

(21) Reimburse a law enforcement agency for the analysis, storage, or disposal of raw materials, controlled substances, chemical precursors, drug paraphernalia, or other materials seized in connection with the offense;

(22) Pay all or part of the reasonable and necessary costs incurred by the victim for psychological counseling made necessary by the offense



or for counseling and education relating to acquired immune deficiency syndrome or human immunodeficiency virus made necessary by the offense; and

(23) Make one payment in an amount not to exceed \$50 to a local crime stoppers program as defined by Section 414.001, Government Code, and as certified by the Crime Stoppers Advisory Council.

(b) A judge [court] may not order a defendant [probationer] to make any payments as a term or condition of community supervision [probation], except for fines, court costs, restitution to the victim, and other [terms or] conditions related personally to the rehabilitation of the defendant [probationer] or otherwise expressly authorized by law. The court shall consider the ability of the defendant [probationer] to make payments in ordering the defendant [probationer] to make payments under this article.

(c) ~~[In addition to any other terms and conditions of probation, the court may require a probationer to reimburse the crime victims compensation fund created under the Crime Victims Compensation Act (Article 8309-1, Vernon's Texas Civil Statutes) for any amounts paid from that fund to a victim of the probationer's offense. In this subsection, "victim" has the meaning assigned by Article 56.01 of this code.~~

~~[(e) If a court grants probation to a person convicted of an offense under Chapter 481, Health and Safety Code, the court may order the person to reimburse a law enforcement agency for the agency's expenses for the confiscation, analysis, storage, or disposal of raw materials, controlled substances, chemical precursors, drug paraphernalia, or other materials seized in connection with the offense.~~

~~[(e) A court may not order a probationer to make any payments as a term and condition of probation, except for fines, court costs, restitution of the victim, payment to a local crime stoppers program under Subsection (b) of this section, and other terms and conditions expressly authorized by statute.~~

~~[(f) If the court grants probation to a person convicted of an offense under Section 21.11, 22.011, 22.021, or 22.04, Penal Code, the court may, on a finding that the probationer is financially able to make payment, require the probationer to pay all or a part of the reasonable and necessary costs incurred by the victim for psychological counseling made necessary by the offense or for counseling and education relating to acquired immune deficiency syndrome or human immunodeficiency virus made necessary by the offense. Any payments ordered under this subsection may not extend past one year from the date of the order.~~

(c) [(g)] If the judge [court] or jury places a defendant on community supervision [grants probation to a person], the judge [court] shall require the defendant [person] to demonstrate to the court whether the defendant [person] has an educational skill level that is equal to or greater than the average skill level of students who have completed the sixth grade in public schools in this state. If the judge [court] determines that the defendant [person] has not attained that skill level, the judge [court] shall require as a condition of community supervision [probation] that the defendant [person] attain that level of educational skill, unless the judge [court] determines that the defendant [person] lacks the intellectual capacity or the learning ability to ever achieve that level of skill.

(d) If the judge places a defendant on community supervision and the defendant is determined to be mentally ill by an examining expert under Section 3, Article 46.02, of this code or in a psychological evaluation conducted under Section 9(i) of this article, the judge may require the defendant as a condition of community supervision to submit to outpatient or inpatient mental health treatment if the:

(1) defendant's:

(A) mental illness is chronic in nature; or

(B) ability to function independently will continue to deteriorate if the defendant is not treated; and

(2) judge determines, in consultation with a local mental health services provider, that appropriate mental health services for the defendant are available through the Texas Department of Mental Health and Mental Retardation under Section 534.053, Health and Safety Code, or through another mental health services provider.

~~[(g) If the court grants probation to a person convicted of an offense under Section 21.11, 22.011, 22.021, or 43.02, Penal Code, the court may require the probationer to receive counseling or education, or both, relating to acquired immune deficiency syndrome or human immunodeficiency virus.~~

~~[(g) On any evidence of the presence of a controlled substance in the defendant's body, or on any evidence the defendant has used a controlled substance, or on evidence that controlled substance use is related to the offense for which the defendant was placed on probation, the court shall require as a condition of probation that the defendant submit to testing for controlled substances in the defendant's body.~~

~~[(h) In addition to any other terms and conditions imposed under this section, the court may require the probationer as a condition of his probation to make one payment in an amount not to exceed \$50 to a local crime stoppers program as defined by Section 414.001(2), Government Code, and as certified by the Crime Stoppers Advisory Council. In imposing the condition, the court shall consider the ability of the probationer to make the payment and the effectiveness and fiscal responsibility of the local crime stoppers program.~~

~~[(h) If the court grants probation to a person convicted of an offense under the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes), the court may require the probationer to receive counseling or education, or both, relating to acquired immune deficiency syndrome or human immunodeficiency virus. The court shall order that a report be made under Section 4 of this article to determine if the probationer should receive the counseling and education.]~~

Sec. 12. CONFINEMENT [DETENTION] AS A CONDITION OF COMMUNITY SUPERVISION [PROBATION]. (a) If a judge [When the court] having jurisdiction of a misdemeanor case requires [grants probation to the defendant, the court may require] as a condition of community supervision [probation] that the defendant submit to a period of confinement [detention] in a county jail, the period of confinement may [or community corrections facility to serve a term of imprisonment] not [to] exceed 90 [30] days [and serve up to 100 hours of community service]. If

a judge having jurisdiction of [in] a felony case requires ~~[the court may require]~~ as a condition of community supervision ~~[probation]~~ that the defendant submit to a period of confinement ~~[detention]~~ in a county jail, the period of confinement may ~~[to serve a term of imprisonment]~~ not ~~[to]~~ exceed 180 days. ~~— A court granting probation to a defendant convicted of an offense under Section 71.02, Penal Code, may require as a condition of probation that the defendant submit to 180 days detention in the county jail or community corrections facility and serve up to 200 hours of public service in addition to any other penalty prescribed by law].~~

(b) A judge that requires as a condition of community supervision that the defendant serve a term in a community corrections facility under Section 18 of this article may not impose a term of confinement under this section that, when added to the term imposed under Section 18, exceeds 24 months.

(c) A judge may impose confinement as a condition of community supervision under Subsection (a) of this section on placing the defendant on supervision or at any time during the supervision period. The judge may impose periods of confinement as a condition of community supervision in increments smaller than the maximum periods provided by Subsection (a) of this section but may not impose periods of confinement that if added together exceed the maximum periods provided by Subsection (a).

Sec. 13. DWI COMMUNITY SUPERVISION ~~[PROBATION]~~. (a) A judge ~~[court]~~ granting community supervision ~~[probation]~~ to a defendant convicted of an offense under Chapter 49, Penal Code, ~~[Article 67011-1, Revised Statutes, and punished under Subsection (d), (e), or (f) of that article]~~ shall require as a condition of community supervision ~~[probation]~~ that the defendant submit to:

(1) not less than 72 hours of continuous confinement ~~[detention in a jail]~~ if the defendant was punished ~~[convicted]~~ under Section 49.09(a) ~~[Subsection (d) of Article 67011-1, Revised Statutes]~~; not less than 10 days of continuous confinement ~~[detention in a jail]~~ if the defendant was punished ~~[convicted]~~ under Section 49.09(b) or (c) ~~[Subsection (e) of Article 67011-1, Revised Statutes]~~; or not less than 30 days of continuous confinement ~~[detention in a jail]~~ if the defendant was convicted under Section 49.07 ~~[Subsection (f) of Article 67011-1, Revised Statutes]~~; and

(2) an evaluation by a supervision ~~[probation]~~ officer or by a person, program, or facility approved by the Texas Commission on Alcohol and Drug Abuse for the purpose of having the facility prescribe and carry out a course of conduct necessary for the rehabilitation of the defendant's drug or alcohol dependence condition.

(b) A judge ~~[court]~~ granting community supervision ~~[probation]~~ to a defendant convicted of an offense under ~~[Subdivision (2), Subsection (a),]~~ Section 49.08 ~~[49.05]~~, Penal Code, shall require as a condition of community supervision ~~[probation]~~ that the defendant submit to a period of ~~[detention in a penal institution to serve a term of]~~ confinement of not less than 120 days.

(c) If the director of a facility to which a defendant ~~[person]~~ is referred under Subdivision (2) of Subsection (a) of this section determines

that the defendant [person] is not making a good faith effort to participate in a program of rehabilitation, the director shall notify the judge [court] that referred the defendant [person] of that fact.

(d) If a judge [court] requires as a condition of community supervision [probation] that the defendant participate in a prescribed course of conduct necessary for the rehabilitation of the defendant's drug or alcohol dependence condition, the judge [court] shall require that the defendant pay for all or part of the cost of such rehabilitation based on the defendant's ability to pay. The judge [court] may, in its discretion, credit such cost paid by the defendant against the fine assessed. In making a determination of a defendant's ability to pay the cost of rehabilitation under this subsection, the judge [court] shall consider whether the defendant has insurance coverage that will pay for rehabilitation.

(e) The confinement [imprisonment] imposed shall be treated as a condition of community supervision [probation], and in the event of a sentence of confinement [imprisonment] upon the revocation of community supervision [probation], the term of imprisonment served hereunder shall be credited toward service of such subsequent confinement [imprisonment].

(f) If a judge [court] grants community supervision [probation] to a defendant convicted of an offense under Sections 49.04-49.08, Penal Code [~~Article 67011-1, Revised Statutes, and punished under Subsection (c) of that article~~], and if before receiving community supervision [probation] the defendant has not submitted to an evaluation under Section 9 of this article, the judge [court] shall require the defendant to submit to the evaluation as a condition of community supervision [probation]. If the evaluation indicates to the judge [court] that the defendant is in need of treatment for drug or alcohol dependency, the judge [court] shall require the defendant to submit to that treatment as a condition of community supervision [probation] in a program or facility approved or licensed by the Texas Commission on Alcohol and Drug Abuse or in a program or facility that complies with standards established by the community justice assistance division of the Texas Department of Criminal Justice, after consultation by the division with the commission.

(g) A jury that recommends community supervision [probation] for a person convicted of an offense under Sections 49.04-49.08, Penal Code [~~Article 67011-1, Revised Statutes, and punished under Subsection (c) of that article~~], may recommend that any driver's license issued to the defendant under Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), not be suspended only if the defendant was 21 years of age or older at the time of the commission of the offense.

(h) If a person convicted of an offense under Sections 49.04-49.08, Penal Code [~~Article 67011-1, Revised Statutes, is punished under Subsection (c) of that article and~~] is placed on community supervision [probation], the judge [court] shall require, as a condition of the community supervision [probation], that the defendant attend and successfully complete before the 181st day after the day community supervision [probation] is granted an educational program jointly approved by the Texas Commission on Alcohol and Drug Abuse, the Department of

Public Safety, the Traffic Safety Section of the Texas [State] Department of ~~[Highways and Public]~~ Transportation, and the community justice assistance division of the Texas Department of Criminal Justice [Texas Adult Probation Commission] designed to rehabilitate persons who have driven while intoxicated. The Texas Commission on Alcohol and Drug Abuse shall publish the jointly approved rules and shall monitor, coordinate, and provide training to persons providing the educational programs. The Texas Commission on Alcohol and Drug Abuse is responsible for the administration of the certification of approved educational programs and may charge a nonrefundable application fee for the initial certification of approval and for renewal of a certificate. The judge may waive the educational program requirement, however, if the defendant by a motion in writing shows good cause. In determining good cause, the judge may consider but is not limited to: the defendant's [offender's] school and work schedule, the defendant's [offender's] health, the distance that the defendant [offender] must travel to attend an educational program, and the fact that the defendant [offender] resides out of state, has no valid driver's license, or does not have access to transportation. The judge shall set out the finding of good cause in the judgment. If a defendant [person] is required, as a condition of community supervision [probation], to attend an educational program, the court clerk shall immediately report that fact to the Department of Public Safety, on a form prescribed by the department, for inclusion in the person's driving record. The report must include the beginning date of the person's community supervision [probation]. Upon the successful completion of the educational program, the person shall give notice to the community supervision and corrections [probation] department. The [probation] department shall then forward the notice to the court clerk. The court clerk shall then report the date of successful completion of the educational program to the Department of Public Safety for inclusion in the defendant's [person's] driving record. If the department does not receive notice that a defendant [person] required to complete an educational program has successfully completed the program within the period required by this section, as shown on department records, the department shall suspend the defendant's [person's] driver's license, permit, or privilege or prohibit the person from obtaining a license or permit, as provided by Section 24(g)(2), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes). This subsection does not apply to a defendant if a jury recommends community supervision [probation] for the defendant and also recommends that the defendant's driver's license not be suspended.

(i) If a defendant [person] convicted of an offense under Sections 49.04-49.08 [Article 67011-1, Revised Statutes, or Section 19.05(a)(2)], Penal Code, is placed on community supervision [probation], the judge [court] may require as a condition of community supervision [probation] that the defendant not operate a motor vehicle unless the vehicle is equipped with a device that uses a deep-lung breath analysis mechanism to make impractical the operation of the motor vehicle if ethyl alcohol is detected in the breath of the operator. The judge [court] shall require the

defendant to obtain the device at his own cost. The Department of Public Safety shall approve devices for use under this subsection. The provisions of Section 23A(f), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), apply to the approval of a device under this subsection and the consequences of that approval. Notwithstanding the provisions of this section, if a defendant [person] is required to operate a motor vehicle in the course and scope of the defendant's [person's] employment and if the vehicle is owned by the employer, the defendant [person] may operate that vehicle without installation of an approved ignition interlock device if the employer has been notified of that driving privilege restriction and if proof of that notification is with the vehicle. This employment exemption does not apply, however, if the business entity that owns the vehicle is owned or controlled by the defendant [person] whose driving privilege has been restricted.

(j) ~~The judge shall [court may] require [or permit] a defendant [person] who is punished [was previously convicted of an offense] under Section 49.09, Penal Code, [Article 67011-1, Revised Statutes, and who was required to attend an educational program under Subsection (h) of this section] as a condition of community supervision [probation], to attend and successfully complete, before the end of the defendant's period of driver's license suspension, an educational program [under Subsection (h) of this section with a curriculum] for repeat offenders approved by the Texas Commission on Alcohol and Drug Abuse [if the court determines that attendance at a program would be in the person's best interest]. The Texas Commission on Alcohol and Drug Abuse shall adopt rules and shall monitor, coordinate, and provide training to persons providing the educational programs. The Texas Commission on Alcohol and Drug Abuse is responsible for the administration of the certification of approved educational programs. The judge may waive the educational program requirement only if the defendant by a motion in writing shows good cause. In determining good cause, the judge may consider the defendant's school and work schedule, the defendant's health, the distance that the defendant must travel to attend an educational program, and whether the defendant resides out of state or does not have access to transportation. The judge shall set out the finding of good cause in the judgment. If a defendant is required, as a condition of community supervision, to attend an educational program, the court clerk shall immediately report that fact to the Department of Public Safety, on a form prescribed by the department, for inclusion in the defendant's driving record. The report must include the beginning date of the defendant's community supervision. On the successful completion of the educational program for repeat offenders, the defendant shall give notice to the community supervision and corrections department. The community supervision and corrections department shall then forward the notice to the court clerk. The court clerk shall then report the date of successful completion of the educational program to the Department of Public Safety for inclusion in the defendant's driving record. If the Department of Public Safety does not receive notice that a defendant required to complete an educational~~

program has successfully completed the program for repeat offenders within the period required by this section, as shown on department records, the department shall continue the suspension of the defendant's driver's license, permit, or privilege or prohibit the defendant from obtaining a license or permit, as provided by Section 24(g)(2), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes).

(k) Notwithstanding Section 24(g), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), if the judge [court], under Subsection (h) or (j) of this section, permits or requires a defendant punished under Section 49.09, Penal Code, [person] to attend an educational program as a condition of community supervision [probation], and the defendant [person has previously been convicted of an offense under Article 67011-1, Revised Statutes, and] has previously been required to attend such a program, the judge [court] nonetheless shall automatically suspend the driver's license, permit, or operating privilege of that person for a period determined by the judge [court] according to the following schedule:

(1) not less than 90 days or more than 365 days, if the defendant [person] is convicted [punished] under Sections 49.04-49.08 [Subsection (c), Article 67011-1, Revised Statutes, whether or not the punishment is increased under Subsection (f) of that article]; or

(2) not less than 180 days or more than two years, if the defendant [person] is punished under Section 49.09 [Subsection (d) or (e), Article 67011-1, Revised Statutes, whether or not the punishment is increased under Subsection (f) of that article].

(l) If the Department of Public Safety receives notice that a defendant [person] has been required or permitted to attend an educational program under Subsection (h) of this section, but the judge [court] has not ordered a period of suspension, the department shall suspend the defendant's [person's] driver's license, permit, or operating privilege, or shall issue an order prohibiting the defendant [person] from obtaining a license or permit for a period of 365 days.

Sec. 14. SUBSTANCE ABUSE FELONY PROGRAM. (a) If a judge places a defendant on community supervision under any provision of this article as an alternative to imprisonment, the judge may require as a condition of community supervision that the defendant serve a term of confinement and treatment in a substance abuse treatment facility operated by the Texas Department of Criminal Justice under Section 493.009, Government Code. A term of confinement and treatment imposed under this section must be an indeterminate term of not more than one year or less than six months.

(b) A judge may impose the condition of community supervision created under this section regardless of whether the defendant is otherwise eligible for community supervision under this article, but only if:

(1) the defendant is convicted of a felony other than a felony under Section 21.11, 22.011, 22.021, or 25.06, Penal Code; and

(2) the judge makes an affirmative finding that:

(A) drug or alcohol abuse significantly contributed to the commission of the crime or violation of community supervision;

(B) the defendant is a suitable candidate for treatment, as determined by the suitability criteria established by the Texas Board of Criminal Justice under Section 493.009(b), Government Code;

(C) there are no other community-based programs or facilities that are suitable for the treatment of the defendant; and

(D) after considering the gravity and circumstances of the offense committed, imposing the condition would best serve the ends of justice.

(c) If a judge requires as a condition of community supervision that the defendant serve a term of confinement and treatment in a substance abuse treatment facility under this section, the judge shall also require as a condition of community supervision that on release from the facility the defendant participate in a drug or alcohol abuse continuum of care treatment plan.

(d) The Texas Commission on Alcohol and Drug Abuse shall develop the continuum of care treatment plan. [CHILD ABUSERS AND SEX OFFENDERS; SPECIAL CONDITIONS. (a) If the court grants probation to a person convicted of an offense described by Article 17.41(a) of this code, the court may require as a condition of probation that the defendant not directly communicate with the victim of the offense or go near a residence, school, or other location, as specifically described in the copy of terms and conditions, frequented by the victim. In imposing the condition, the court may grant the defendant supervised access to the victim. To the extent that a condition imposed under this subsection conflicts with an existing court order granting possession of or access to a child, the condition imposed under this subsection prevails for a period specified by the court granting probation, not to exceed 90 days.

[(b) If the court grants probation to a person convicted of an offense under Section 21.11, 22.011, 22.021, or 22.04, Penal Code, the court may require the probationer to attend psychological counseling sessions at the direction of the probation officer and may require the probationer to pay all or a part of the reasonable and necessary costs incurred by the victim for psychological counseling made necessary by the offense, upon a finding that the probationer is financially able to make payment. Any payments ordered under this subsection may not extend past one year from the date of the order.]

Sec. 15. PROCEDURES RELATING TO STATE JAIL FELONY COMMUNITY SUPERVISION. (a) On conviction of a state jail felony, the judge shall suspend the imposition of the sentence of confinement and place the defendant on community supervision. The judge may suspend in whole or in part the imposition of any fine imposed on conviction.

(b) The minimum period of community supervision a judge may impose under this section is two years. The maximum period of community supervision a judge may impose under this section is five years.

(c) A judge may impose any condition of community supervision on a defendant that the judge could impose on a defendant placed on



supervision for an offense other than a state jail felony, except that the judge may impose on the defendant a condition that the defendant submit to a period of confinement in a county jail under Section 12 of this article only if the term does not exceed 30 days.

(d) A judge may impose as a condition of community supervision that a defendant submit at the beginning of the period of community supervision to a term of confinement in a state jail felony facility for a term not to exceed 60 days, or 120 days if the defendant previously has been convicted of a felony, or one year if the defendant previously has been convicted of two or more felonies. A judge may not require a defendant to submit to both the term of confinement authorized by this subsection and a term of confinement under Section 12 of this article. For the purposes of this subsection, a defendant previously has been convicted of a felony regardless of whether the sentence for the previous conviction was actually imposed or was probated and suspended.

(e) If a defendant violates a condition of community supervision imposed on the defendant under this article and after a hearing under Section 21 of this article the judge modifies the defendant's community supervision, the judge may impose any sanction permitted by Section 22 of this article, except that the judge may not require a defendant to serve a period confinement in a state jail felony facility as a modification of the defendant's community supervision.

(f) If a defendant violates a condition of community supervision imposed on the defendant under this article and after a hearing under Section 21 of this article the judge revokes the defendant's community supervision, the judge shall dispose of the case in the manner provided by Section 23 of this article. The court retains jurisdiction over the defendant until the first anniversary of the date the defendant is received into the custody of a state jail. At any time after the 75th day after the date defendant is received into the custody of a state jail and before the first anniversary of the date the defendant is received into the custody of a state jail, the judge on the judge's own motion, on the motion of the attorney representing the state, or on the motion of the defendant may suspend further execution of the sentence and place the defendant on community supervision under the conditions of this section.

(g) The facility director of a state jail felony facility shall report to a judge who orders a defendant confined in the facility not less than every 90 days on the defendant's programmatic progress, conduct, and conformity to the rules of the facility.

(h) A defendant confined in a state jail felony facility after revocation of community supervision does not earn good conduct time for time served in the facility. A judge may credit time served by a defendant in a county jail after modification of community supervision against any time the defendant is subsequently required to serve in a state jail felony facility after revocation of community supervision. A judge shall credit time served by a defendant in a state jail felony facility after modification of community supervision against any time the defendant is subsequently required to serve in a state jail felony facility after revocation of community supervision. [RESTITUTION. (a) If a payment is received

~~under Section 6(a)(8) or (a)(14) of this article from a probationer for transmittal to a victim of an offense, the probation department that receives the payment for disbursement to the victim shall deposit the payment in an interest-bearing account in the department having original jurisdiction. The department shall transmit the payment to the victim as soon as practicable.~~

~~[(a) If the court requires a probationer to make restitution to a victim of the probationer's offense, and a payment is received under this article from the probationer for transmittal to a victim of the offense, the probation department that receives the payment for disbursement to the victim shall immediately deposit the payment in an interest-bearing account in the department having original jurisdiction. The department shall transmit the payment to the victim as soon as practicable.~~

~~[(b) If a victim cannot be located, immediately after receiving a final payment in satisfaction of an order of restitution for the victim, the probation department shall notify the victim of that fact by certified mail, mailed to the last known address of the victim. If after receiving notice, a victim makes a claim for payment, the probation department promptly shall remit the payment to the victim. Not earlier than the fifth anniversary of the date on which a probation department mails notice under this subsection, if the victim has not made a claim for payment, the probation department shall transfer the payment from the interest-bearing account to the comptroller of public accounts, after deducting five percent of the payment as a collection fee and deducting any interest accrued on the payment. The comptroller shall deposit the payment in the state treasury to the credit of the compensation to victims of crime auxiliary fund.~~

~~[(b) If a victim cannot be located, immediately after receiving a final payment in satisfaction of an order of restitution for the victim the probation department shall attempt to notify the victim of that fact by certified mail, mailed to the last known address of the victim. If a victim then makes a claim for payment, the probation department promptly shall remit the payment to the victim. Not earlier than the fifth anniversary of the date on which a probation department mails notice under this subsection, if the victim has not made a claim for payment, the probation department shall transfer the payment from the interest-bearing account to the comptroller of public accounts, after deducting five percent of the payment as a collection fee and deducting any interest accrued on the payment. The comptroller shall deposit the payment in the state treasury to the credit of the compensation to victims of crime auxiliary fund.~~

~~[(c) The collection fee under Subsection (b) of this section and the accrued interest under Subsections (a) and (b) of this Section shall be deposited in the special fund of the county treasury provided by Section 11, Article 42.13, of this code to be used for the same purposes for which state aid may be used under that section. The probation department has a maximum of 121 days after the four-year expiration date to transfer the funds to the comptroller's office. Failure to comply with the 121-day deadline will result in a five percent collection fee penalty calculated from the total deposit and all interest attributable to the unclaimed funds.~~

~~[(d) If the victim of the offense claims the payment during the four-year period in which the payment is held in the interest-bearing account, the probation department shall pay the victim the amount of the original payment, less any interest earned while holding the payment. After the payment has been transferred to the comptroller, the probation department has no liability in regard to the payment, and any claim for the payment must be made to the comptroller. If the victim makes a claim to the comptroller, the comptroller shall pay the victim the amount of the original payment, less the collection fee, from the compensation to victims of crime auxiliary fund.]~~

~~[Sec. 16. WORK PROBATION. (a) A court granting probation to a defendant convicted of a felony may require as a condition of probation that the defendant work a specified number of hours under Section 17 of this article or work a specified number of hours in a supervision work program authorized under this section, unless the court determines that the defendant is physically or mentally incapable of participating in the work program or that participating in the work program will work a hardship on the defendant or the defendant's dependents, in which event the court shall note that fact on the order granting probation. The amount of work hours may not be less than 24 hours and may not be more than 1,000 hours. The court may not require the defendant to work more than eight hours during any week. The court shall make a good-faith effort to place the defendant in a type of work for which the defendant's previous job experience makes the defendant most suited.]~~

~~[(b) The director of a probation department may contract with state agencies or political subdivisions of the state, using defendants required to participate in a work program under this section, to perform tasks contracted for by the agency or subdivision. Proceeds from a contract entered into under this subsection shall be used by the probation department to offset expenses incurred by the department in supervising probationers participating in the work program. Any proceeds in excess of the amount needed to offset the expenses, including the purchase of liability insurance and workers' compensation coverage for probationers performing community service work, shall be remitted by the director of the probation department to the Texas Adult Probation Commission. Proceeds received by the commission under this subsection shall be used to offset expenses incurred by the commission in assisting probation departments to establish and administer programs under this section. Any proceeds in excess of the amount needed to offset the expenses shall be remitted by the commission to the comptroller of public accounts, to be deposited in the general revenue fund.]~~

~~[(c) A director of an adult probation department may contract for work probation programs with nonprofit organizations that serve the public good by providing assistance to the poor, assisting the elderly, or performing other projects that benefit the community. Under the contract, defendants required under this section to participate in a work program as a condition of probation shall perform tasks assigned by the nonprofit organization. The nonprofit organization in turn must enter into contracts with state agencies, political subdivisions, or other nonprofit organizations under~~

~~which the nonprofit organization furnishes supervised persons to participate in work projects for the public good.~~

~~[(d) A director of an adult probation department, an employee of a department, an officer of a state agency or political subdivision, an organization acting in furtherance of a court's work program order, a director of the organization, or an authorized volunteer working for or utilized by the organization is not liable for damages arising from an act or failure to act by the director, officer, employee, or volunteer in connection with a work program described by this section if the act or failure to act:~~

~~[(1) was performed in an official capacity or in furtherance of a court's work program order; and~~

~~[(2) was not intentional, wilfully or wantonly negligent, or performed with conscious indifference or reckless disregard for the safety of others.~~

~~[(e) Chapter 101, Civil Practice and Remedies Code, does not apply to a claim based on an act or a failure to act of an adult probation department, a director, officer, or employee of a department, a state agency or political subdivision, an officer or employee of a state agency or political subdivision, an organization acting in furtherance of a court's work program order, a director of the organization, or an authorized volunteer working for or utilized by the organization if the act or failure to act is in connection with a work program.~~

~~[(f) This section may not be used by a court in a manner that results in a loss of jobs by employees of the state or any political subdivision of the state.~~

~~[(g) State agencies and political subdivisions of the state entering into contracts under this section may require liability and workers' compensation coverage to the maximum of their liability limits as a condition for entry into the contract and may also require that the contracting unit of government and its agents and employees be coinsured under the policies.~~

~~[(h) Notwithstanding the provisions of Subsection (a) of this section, a court may order a defendant who is not employed to perform up to 32 hours of work probation under this section and may direct the defendant to use the remaining hours of the week to seek employment.]~~

Section 16 [17]. COMMUNITY SERVICE. (a) A judge shall [If the court places a defendant on probation, the court may] require[;] as a condition of community supervision [the probation,] that the defendant work a specified number of hours at a community service project or projects for an organization or organizations approved by the judge and designated by the department [named in the court's order, and may also require that the defendant submit to testing for controlled substances], unless the judge determines and notes on the order placing the defendant on community supervision that:

(1) the defendant is physically or mentally incapable of participating in the project;

(2) participating in the project will work a hardship on the defendant or the defendant's dependents;

(3) the defendant is to be confined in a substance abuse punishment facility as a condition of community supervision; or

(4) there is other good cause shown.

(b) The court may not require the defendant to work more than eight hours during any week. The court shall make a good-faith effort to place the defendant in a type of work for which the defendant's previous job experience, if any, makes the defendant most suited.

(c) ~~(b)~~ The amount of community service work ordered by the judge ~~court~~;

(1) may not exceed 1,000 hours and may not be less than 320 hours for an offense classified as a first degree felony;

(2) may not exceed 800 hours and may not be less than 240 hours for an offense classified as a second degree felony;

(3) may not exceed 600 hours and may not be less than 160 hours for an offense classified as a third degree felony;

(4) may not exceed 400 hours and may not be less than 80 hours for an offense classified as a state jail felony

(5) ~~(4)~~ may not exceed 200 hours and may not be less than 80 hours for an offense classified as a Class A misdemeanor or for any other misdemeanor for which the maximum permissible ~~confinement~~ ~~[imprisonment]~~, if any, exceeds six months or the maximum permissible fine, if any, exceeds \$4,000 ~~[\$1,000]~~; and

(6) ~~(5)~~ may not exceed 100 hours and may not be less than 24 hours for an offense classified as a Class B misdemeanor or for any other misdemeanor for which the maximum permissible ~~confinement~~ ~~[imprisonment]~~, if any, does not exceed six months and the maximum permissible fine, if any does not exceed \$4000 ~~[\$1,000]~~.

(d) A defendant required to perform community service under this section is not a state employee for the purposes of Article 8309g or 8309h, Revised Statutes.

(e) If the court makes an affirmative finding under Article 42.014, Code of Criminal Procedure, the court may order the defendant to perform community service under this section at a project designated by the court that primarily serves the person or group who was the target of the defendant's bias or prejudice. If the court orders community service under this subsection the court shall order the defendant to perform not less than:

(1) 100 hours of service if the offense is a misdemeanor; or

(2) 300 hours of service if the offense is a felony.

~~[(e) A director of a community supervision and corrections department, an employee of a department, or an officer of a state agency or political subdivision is not liable for damages arising from an act or failure to act by the director, employee, or officer in connection with a community restitution service program described by this section if the act or failure to act:~~

~~[(1) was performed in an official capacity; and~~

~~[(2) was not intentional, wilfully or wantonly negligent, or performed with conscious indifference or reckless disregard for the safety of others.~~

~~[(d) Chapter 101, Civil Practice and Remedies Code, does not apply to a claim based on an act or a failure to act of a community supervision and corrections department, a director, officer, or employee of a department, a state agency or political subdivision, or an officer or employee of a state agency or political subdivision if the act or failure to act is in connection with a community service program.~~

~~[(c) A sheriff, employee of a sheriff's department, county commissioner, county employee, county judge, employee of a community corrections and supervision department, restitution center, or officer or employee of a political subdivision other than a county is not liable for damages arising from an act or failure to act in connection with community service performed by an inmate pursuant to this article if the act or failure to act:~~

~~[(1) was performed pursuant to court order; and~~

~~[(2) was not intentional, wilfully or wantonly negligent, or performed with conscious indifference or reckless disregard for the safety of others;]~~

Sec. 17. CHANGE OF RESIDENCE; LEAVING THE STATE. (a) If, for good and sufficient reasons, a defendant desires to change his residence within the state, the change may be effected by application to the supervising supervision officer, which change shall be subject to the judge's consent and subject to such regulations as the judge may require in the absence of an officer in the locality to which the defendant is transferred.

(b) Any defendant who removes himself from the state without permission of the judge having jurisdiction of the case shall be considered a fugitive from justice and shall be subject to extradition as provided by law. ~~[18. RESTITUTION CENTERS. (a) If a judge places a defendant on probation under any provision of this article as an alternative to imprisonment, the judge may require as a condition of probation that the defendant serve a term of not less than three months or more than 12 months in a restitution center if:~~

~~[(1) the district is served by a restitution center or contracts with a department that agrees to provide spaces in its restitution center;~~

~~[(2) the defendant is not sentenced for a felony offense under Title 5, Penal Code; and~~

~~[(3) the trier of facts determines that the defendant did not cause the serious bodily injury or death of another as a result of the commission of the offense or use a deadly weapon during the commission of or flight from the offense.~~

~~[(b) If a jury recommends that an eligible defendant serve an alternate term in a restitution center, the judge shall follow the jury's recommendation:~~

~~[(c) A probationer granted probation under this section may not earn good conduct credit for time spent in a restitution center or apply time spent in the center toward completion of a prison sentence if the probation is revoked:~~

~~[(d) As directed by the judge but at least once during every three months after the date that a probationer is in a restitution center, the~~

~~restitution center director shall file with the chief adult probation officer or the probation department director a copy of an evaluation made by the director of the probationer's behavior and attitude at the center. The officer or director shall examine the evaluation, make written comments on the evaluation that he considers relevant, and file the evaluation and comments with the judge who granted probation to the probationer. If the evaluation indicates that the probationer has made significant progress toward compliance with court-ordered conditions of probation and payment of restitution, the court may release the probationer from the restitution center. The probationer shall serve the remainder of his probation under any terms and conditions the court imposes under this article.~~

~~[(c) No later than nine months after the date on which a defendant is granted probation under this section, the restitution center director shall file with the chief adult probation officer or the probation department director a copy of an evaluation made by the director of the probationer's behavior and attitude at the center. The officer or director shall examine the evaluation, make written comments on the evaluation that he considers relevant, and file the evaluation and comments with the judge who granted probation to the defendant. If the report indicates that the probationer has made significant progress toward court-ordered conditions of probation and payment of restitution, the court may modify its sentence and release the probationer in the same manner as provided by Subsection (d) of this section. If the report indicates that the probationer would benefit from continued participation in the restitution center program, the court may order the probationer to remain at the restitution center for a period determined by the court. If the report indicates that the probationer has not made significant progress toward rehabilitation, the court may revoke probation and order the prisoner to the term of imprisonment specified in the probationer's sentence.~~

~~[(f) If ordered by the judge who placed the defendant on probation, a restitution center director shall attempt to secure employment for the probationer. The director shall also attempt to place a probationer as a worker in a community service project of a type described by Section 17 of this article, either during off-work hours if the probationer is employed or during any time if the probationer is unable to find employment, if so ordered by the judge that placed the defendant on probation.~~

~~[(g) The employer of a probationer participating in a program under this section shall deliver the probationer's salary to the restitution center director. The director shall deposit the salary into a fund to be given to the probationer on his release after deducting:~~

~~[(1) the cost to the center for the probationer's food, housing, and supervision;~~

~~[(2) necessary travel expense to and from work and community service projects and other incidental expenses of the probationer;~~

~~[(3) support of the probationer's dependents; and~~

~~[(4) restitution to the victims of an offense committed by the probationer.~~

~~[(h) If a restitution center director is unable to find employment for a probationer, the director may transfer the probationer to the supervision of the director of another restitution center who agrees to accept the probationer as a participant in the center's program.~~

~~[(i) A restitution center director may grant a short-term furlough to a probationer and may grant an emergency furlough to a probationer for the documented purposes of obtaining medical treatment or diagnosis or attending funerals or visiting critically ill relatives.~~

~~[(j) A probationer participating in a program under this article shall be confined in the restitution center at all times except for:~~

~~[(1) time spent at work and traveling to and from work;~~

~~[(2) time spent attending and traveling to and from an education or rehabilitation program approved by the restitution center director or the court;~~

~~[(3) time spent attending and traveling to and from a community service project; and~~

~~[(4) time spent on short-term or emergency furlough.]~~

Sec. 18 [19]. COMMUNITY CORRECTIONS FACILITIES [OTHER THAN RESTITUTION CENTERS]. (a) In this section, "community corrections facility" means a facility described by Subsection (b)(2) [listed in Subdivision (1)] of Section 1 [5], Article 42.13, of this code; ~~other than a restitution center~~.

(b) If a judge requires ~~[places a defendant on probation under any provision of this article as an alternative to imprisonment, the judge may require]~~ as a condition of community supervision ~~[probation]~~ that the defendant serve a term ~~[of not less than one month or more than 24 months]~~ in a community corrections facility, the term may not be more than 24 months ~~[designated by the judge if:~~

~~[(1) the district is served by such a community corrections facility or contracts with a department that agrees to provide spaces in its community corrections facility of that type; and~~

~~[(2) the trier of facts determines that the defendant did not cause the serious bodily injury or death of another as a result of the commission of the offense or use a deadly weapon during the commission of or flight from the offense].~~

(c) ~~[If a jury recommends that an eligible defendant serve an alternate term in a community corrections facility, the judge shall follow the jury's recommendation:~~

~~[(d)] A defendant~~ [probationer] granted community supervision ~~[probation]~~ under this section may not earn good conduct credit for time spent in a community corrections facility or apply time spent in the facility toward completion of a prison sentence if the community supervision ~~[probation]~~ is revoked.

~~[(d) [(e)]]~~ As directed by the judge, the corrections facility director shall file with the community supervision and corrections ~~[chief adult probation officer or the probation]~~ department director a copy of an evaluation made by the director of the defendant's ~~[probationer's]~~ behavior and attitude at the facility. The ~~[officer or]~~ director shall examine the evaluation, make written comments on the evaluation that he considers relevant, and file the



evaluation and comments with the judge who granted community supervision [probation] to the defendant [probationer]. If the evaluation indicates that the defendant [probationer] has made significant progress toward compliance with court-ordered conditions of community supervision [probation], the court may release the defendant [probationer] from the community corrections facility. The defendant [probationer] shall serve the remainder of his community supervision [probation] under any terms and conditions the court imposes under this article.

(e) ~~(f)~~ No later than 18 months after the date on which a defendant is granted community supervision [probation] under this section, the community corrections facility director shall file with the community supervision and corrections ~~chief adult probation officer or the probation~~ department director a copy of an evaluation made by the director of the defendant's ~~probationer's~~ behavior and attitude at the center. The ~~officer or~~ director shall examine the evaluation, make written comments on the evaluation that he considers relevant, and file the evaluation and comments with the judge who granted community supervision [probation] to the defendant. If the report indicates that the defendant [probationer] has made significant progress toward court-ordered conditions of community supervision [probation], the court shall modify its sentence and release the defendant [probationer] in the same manner as provided by Subsection (e) of this section. If the report indicates that the defendant [probationer] would benefit from continued participation in the community corrections facility program, the court may order the defendant [probationer] to remain at the community corrections facility for a period determined by the court. If the report indicates that the defendant [probationer] has not made significant progress toward rehabilitation, the court may revoke community supervision [probation] and order the defendant [prisoner] to the term of confinement ~~imprisonment~~ specified in the defendant's ~~probationer's~~ sentence.

(f) ~~(g)~~ If ordered by the judge who placed the defendant on community supervision [probation], a community corrections facility director shall attempt to place a defendant [probationer] as a worker in a community-service project of a type described by Section 16 ~~17~~ of this article.

~~(g) (h) A community corrections facility director has the same authority as a restitution center director has under Section 18(i) of this article.~~

~~(i)~~ A defendant [probationer] participating in a program under this article shall be confined in the community corrections facility at all times except for:

(1) time spent attending and traveling to and from an education or rehabilitation program as ordered by the court;

(2) time spent attending and traveling to and from a community-service project; ~~and~~

(3) time spent away from the facility for purposes described by ~~Section 18(i) of~~ this section; ~~and~~

~~(4) time spent traveling to and from work, if applicable [article].~~

~~(h) A judge that requires as a condition of community supervision that~~

the defendant serve a term in a community corrections facility may not impose a subsequent term in a community corrections facility or jail during the same supervision period that, when added to the terms previously imposed, exceeds 24 months.

(i) If a defendant participating in a program under this section is not required by the judge to deliver the defendant's salary to the restitution center director, the employer of the defendant shall deliver the salary to the director. The director shall deposit the salary into a fund to be given to the defendant on release after deducting:

(1) the cost to the center for the defendant's food, housing, and supervision;

(2) necessary travel expense to and from work and community-service projects and other incidental expenses of the defendant;

(3) support of the defendant's dependents; and

(4) restitution to the victims of an offense committed by the defendant.

~~[Sec. 20. INTENSIVE OR MAXIMUM PROBATION. If a judge determines that a defendant whom the judge would otherwise sentence to the institutional division of the Texas Department of Criminal Justice would benefit from intensive or maximum probation, the judge shall suspend imposition of the sentence and place the defendant on intensive or maximum probation.]~~

~~[Sec. 21. ELECTRONIC MONITORING. (a) If a judge sentences a defendant to a term of confinement in the county jail or imprisonment in the institutional division of the Texas Department of Criminal Justice, the defendant is eligible for probation, and the district is served by a district probation office that has an electronic monitoring program approved by the community justice assistance division of the Texas Department of Criminal Justice, the judge may suspend imposition of the sentence of imprisonment or confinement and require as a condition of probation that the defendant submit to electronic monitoring. The judge may also require the defendant to submit to testing for controlled substances.]~~

~~[(b) The court may, on a determination that the probationer has made significant progress toward compliance with court-ordered conditions of probation, release the probationer from the electronic monitoring program. The probationer shall serve the remainder of his probation under any terms and conditions the court imposes under this article.]~~

~~[(b) If at any time after a probationer is placed on probation under this section the court determines the probationer has violated a condition of probation under this section or any other section of this article, the court may revoke probation and order the probationer to the term of imprisonment or confinement specified in the probationer's sentence.]~~

~~[(d) A probationer serving on electronic monitoring as a court-ordered condition of probation commits an offense if he intentionally or recklessly damages or destroys any of the electronic monitoring devices. An offense under this subsection is a Class B misdemeanor.]~~

Sec. 19 [22]. FEES. (a) Except as otherwise provided by this subsection, a judge ~~[court]~~ granting community supervision ~~[probation]~~

shall fix a fee of not less than \$25 and not more than \$40 per month to be paid to the court by the defendant [probationer] during the community supervision [probationary] period. The judge [court] may make payment of the fee a condition of granting or continuing the community supervision [probation]. The judge [court] may waive or reduce the fee or suspend a monthly payment of the fee if the judge [it] determines that payment of the fee would cause the defendant [probationer] a significant financial hardship.

(b) The judge [court] shall deposit the fees received under Subsection (a) of this section in the special fund of the county treasury, to be used for the same purposes for which state aid may be used under Article 42.131 of this code.

(c) A judge [court] receiving a defendant [probationer] for supervision as authorized by Article 42.11 of this code may impose on the defendant [probationer] any term of community supervision [probation] authorized by this article and may require the defendant [probationer] to pay the fee authorized by Subsection (a) of this section. Fees received under this section shall be deposited in the same manner as required by Subsection (b) of this section.

(d) For the purpose of determining when fees due on conviction are to be paid to any officer or officers, the placing of the defendant on community supervision [probation] shall be considered a final disposition of the case, without the necessity of waiting for the termination of the period of community supervision [probation or suspension of sentence].

Sec. 20 [23]. REDUCTION OR TERMINATION OF COMMUNITY SUPERVISION [PROBATION]. (a) At any time, after the defendant has satisfactorily completed 50 percent [one-third] of the original community supervision [probationary] period or two years of community supervision [probation], whichever is less [the lesser], the period of community supervision [probation] may be reduced or terminated by the judge [court]. Upon the satisfactory fulfillment of the conditions of community supervision [probation], and the expiration of the period of community supervision [probation], the judge [court], by order duly entered, shall amend or modify the original sentence imposed, if necessary, to conform to the community supervision [probation] period and shall discharge the defendant. ~~If [In case the defendant has been convicted or has entered a plea of guilty or a plea of nolo contendere to an offense other than an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, or an offense under Article 67011-1, Revised Statutes, and] the judge [court] discharges the [has discharged the] defendant under this section, the judge [hereunder, such court] may set aside the verdict or permit the defendant to withdraw his plea, and shall dismiss the accusation, complaint, information or indictment against the [such] defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which he has been convicted or to which he has pleaded guilty, except that:~~

(1) proof of the [his said] conviction or plea of guilty shall be made known to the judge [court] should the defendant again be convicted of any criminal offense; and

(2) if the defendant is an applicant for a license or is a licensee under Chapter 42, Human Resources Code, the Texas Department of Human Services may consider the fact that the defendant previously has received community supervision [~~probation~~] under this article [~~section~~] in issuing, renewing, denying, or revoking a license under that chapter.

(b) This section does not apply to a defendant convicted of an offense under Sections 49.04-49.08, Penal Code.

Sec. 21 [24]. VIOLATION OF COMMUNITY SUPERVISION [~~PROBATION~~]: DETENTION AND HEARING. (a) At any time during the period of community supervision [~~probation~~] the judge [~~court~~] may issue a warrant for violation of any of the conditions of the community supervision [~~probation~~] and cause a defendant convicted under Section 43.02, Penal Code, or under Chapter 481, Health and Safety Code, or Sections 485.031 through 485.035, Health and Safety Code, or placed on deferred adjudication after being charged with one of those offenses, to be subject to the control measures of Section 81.083, Health and Safety Code, and to the court-ordered-management provisions of Subchapter G, Chapter 81, Health and Safety Code.

(b) At any time during the period of community supervision [~~probation~~] the judge [~~court~~] may issue a warrant for violation of any of the conditions of the community supervision [~~probation~~] and cause the defendant to be arrested. Any supervision [~~probation~~] officer, police officer or other officer with power of arrest may arrest such defendant with or without a warrant upon the order of the judge [~~of such court~~] to be noted on the docket of the court. A defendant [~~probationer~~] so arrested may be detained in the county jail or other appropriate place of confinement [~~detention~~] until he can be taken before the judge [~~court~~]. Such officer shall forthwith report such arrest and detention to such judge [~~court~~]. If the defendant has not been released on bail, on motion by the defendant the judge [~~court~~] shall cause the defendant to be brought before the judge [~~it~~] for a hearing within 20 days of filing of said motion, and after a hearing without a jury, may either continue, extend, modify, or revoke the community supervision [~~probation~~]. A judge [~~court~~] may revoke the community supervision [~~probation~~] of a defendant who is imprisoned [~~confined~~] in a penal [~~or correctional~~] institution without a hearing if the defendant in writing before a court of record in the jurisdiction where imprisoned [~~confined~~] waives his right to a hearing and to counsel, affirms that he has nothing to say as to why sentence should not be pronounced against him, and requests the judge [~~court~~] to revoke community supervision [~~probation~~] and to pronounce sentence. In a felony case, the state may amend the motion to revoke community supervision [~~probation~~] any time up to seven days before the date of the revocation hearing, after which time the motion may not be amended except for good cause shown, and in no event may the state amend the motion after the commencement of taking evidence at the hearing. The judge [~~court~~] may continue the hearing for good cause shown by either the defendant or the state.

(c) [(b)] In a community supervision [~~probation~~] revocation hearing at which it is alleged only that the defendant [~~probationer~~] violated the

conditions of community supervision [probation] by failing to pay compensation paid to appointed counsel, community supervision [probation] fees, court costs, restitution, or reparations, the inability of the defendant [probationer] to pay as ordered by the judge [court] is an affirmative defense to revocation, which the defendant [probationer] must prove by a preponderance of evidence.

(d) [(e)] A defendant has a right to counsel at a hearing under this section.

Sec. 22 [25]. CONTINUATION OR MODIFICATION. (a) If after a hearing under Section 21 [24] of this article a judge [court] continues or modifies community supervision [a felony probation] after determining that the defendant [probationer] violated a condition of community supervision [probation], the judge [court] may impose any other conditions the judge determines are appropriate, including [one or more of the following sanctions on the probationer]:

(1) a requirement that the defendant [probationer] perform [work probation or] community service for a number of hours specified by the court under Section 16 [or 17] of this article, or an increase in the number of hours that the defendant [probationer] has previously been required to perform under those sections in an amount not to exceed double the number of hours permitted by Section 16;

(2) an increase in the period of community supervision [probation], in the manner described by Subsection (b) of this section;

(3) an increase in the defendant's [probationer's] fine, in the manner described by Subsection (d) [(e)] of this section; and

(4) in a first, second, or third degree felony case, the placement of the defendant in a state jail felony facility for a period not to exceed 90 days [probationer in an intensive or maximum probation program, in the same manner and under the same conditions as if the court had originally placed the probationer in that program]; or

(5) the placement of the defendant in a substance abuse felony punishment program operated under Section 493.009, Government Code, in the same manner and under the same conditions as if the judge had originally placed the defendant in that program, if the defendant would have been eligible for placement in the program as an initial condition of community supervision. [the placement of the probationer in an electronic monitoring program under Section 21 of this article;

[(6) confinement in the county jail for a period not to exceed 30 days, to be served consecutively, or at the discretion of the court, in the manner provided by Article 42.033 or 42.034 of this code;

[(7) placement in a community corrections facility, in the same manner and under the same conditions as if the court had originally placed the probationer in that program, if the probationer would have been eligible for sentencing to the center on conviction of the offense for which the probationer received probation;

[(8) confinement in the county jail for a period not to exceed 90 days, to be served consecutively; or

[(9) confinement in a facility operated by the institutional division of the Texas Department of Criminal Justice for a period of either 60 or

~~90 days, as specified by the court, if the court enters in the order modifying probation a statement that the court has previously imposed three or more sanctions on the defendant under this section.]~~

(b) If the judge imposes a sanction under Subsection (a)(5) of this section, the judge shall also impose a condition requiring the defendant on successful completion of the program to participate in a drug or alcohol abuse continuum of care program.

(c) The judge may extend a period of community supervision under this section as often as the judge determines is necessary, but in no case may the period of community supervision in a first, second, or third degree felony case exceed 10 years or the period of community supervision in a misdemeanor case exceed three years. A court may extend a period of community supervision under this section at any time during the period of supervision or, if a motion for revocation of community supervision is filed before the period of supervision ends, before the first anniversary of the date on which the period of supervision expires. [A court may impose a sanction on a probationer described by Subsection (a)(2) of this section by extending the period of probation for a period not to exceed one year. The total period of probation, including any extensions under this subsection, may not exceed 10 years.]

(d) [(c)] A judge [court] may impose a sanction on a defendant [probationer] described by Subsection (a)(3) of this section by increasing the fine imposed on the defendant. The original fine imposed on the defendant [probationer] and an increase in the fine imposed under this subsection may not exceed the maximum fine for the offense for which the defendant [probationer] was sentenced. The judge [court] shall deposit money received from an increase in the defendant's [probationer's] fine under this subsection in the special fund of the county treasury to be used for the same purposes for which state aid may be used under Article 42.131 of this code.

~~[(d) If a court continues or modifies a misdemeanor probation after determining that the probationer violated a condition of probation, the court may extend the probationer's period of probation or increase the probationer's fine, in the same manner under Subsections (b) and (c) of this section as if the probationer were a felony probationer, except that the total period of probation, including any extensions imposed under this subsection, may not exceed three years.]~~

Sec. 23 [26]. REVOCATION. (a) If community supervision [probation] is revoked after a hearing under Section 21 [24] of this article, the judge [court] may proceed to dispose of the case as if there had been no community supervision [probation], or if the judge [it] determines that the best interests of society and the defendant [probationer] would be served by a shorter term of confinement [imprisonment], reduce the term of confinement [imprisonment] originally assessed to any term of confinement [imprisonment] not less than the minimum prescribed for the offense of which the defendant [probationer] was convicted. The judge [court] shall enter the amount of restitution or reparation owed by the defendant on the date of revocation in the judgment in the case.

(b) No part of the time that the defendant is on community supervision [~~probation~~] shall be considered as any part of the time that he shall be sentenced to serve[~~except for time spent by the defendant in actual confinement as a condition of probation under Section 12 or 13 of this article~~]. The right of the defendant [~~probationer~~] to appeal [~~to the Court of Appeals~~] for a review of the [~~trial and~~] conviction and punishment, as provided by law, shall be accorded the defendant [~~probationer~~] at the time he is placed on community supervision [~~probation~~]. When he is notified that his community supervision [~~probation~~] is revoked for violation of the conditions of community supervision [~~probation~~] and he is called on to serve a sentence in a jail or in the institutional division of the Texas Department of Criminal Justice [~~an institution operated by the Department of Corrections~~], he may appeal the revocation.

Sec. 24. DEFERRED PROSECUTION. (a) An attorney representing the state may enter into an agreement with a defendant who has been arrested for a criminal offense but not charged with the offense to defer prosecution.

(b) The agreement shall specify that:

(1) the attorney representing the state shall provide the defendant with a rehabilitation plan with specific conditions;

(2) the duration of the rehabilitation plan will not exceed one year, except as provided by Subsection (c) of this section;

(3) the defendant will submit to the supervision of the local community supervision and corrections department to ensure completion of the rehabilitation plan;

(4) the defendant will pay reasonable costs for any programs required in the rehabilitation plan;

(5) failure of the defendant to complete in a timely manner the rehabilitation plan will result in the prosecution of the defendant for the offense for which the defendant was arrested;

(6) the attorney representing the state will move to dismiss the charges under Article 32.02 of this code not later than the 30th day after the date on which the defendant successfully completes the plan; and

(7) the defendant waives the right to a speedy trial.

(c) The attorney representing the state may extend the period in which the defendant is required to complete the rehabilitation plan, for a period not to exceed one year, if the defendant has not:

(1) paid restitution or other fees specified in the rehabilitation plan;

(2) successfully completed any programs specified in the rehabilitation plan; or

(3) violated conditions specified in the rehabilitation plan.

(d) The attorney representing the state may not enter into an agreement with a defendant to defer prosecution under this section unless the community supervision and corrections department has an agreement with the attorney to supervise defendants under this section.

(e) The statute of limitations is tolled for any offense for the period during which prosecution is deferred under this section.

Sec. 25. SUPERVISION CONTRACTS. The Texas Board of Criminal Justice may contract with the commissioners court of a county or a community supervision and corrections department for the confinement of felony probationers. A commissioners court or a department may not enter into a contract under this section unless:

(1) the commissioners court or department first consults with the community justice council serving the county or serving the department; and

(2) the most recent community justice plan for the county or department served by the community justice council that has been approved by the community justice assistance division describes the contract.

~~[Sec. 27. CHANGE OF RESIDENCE, LEAVING THE STATE. (a) If, for good and sufficient reasons, a probationer desires to change his residence within the State, such transfer may be effected by application to the supervising probation officer, which transfer shall be subject to the court's consent and subject to such regulations as the court may require in the absence of a probation officer in the locality to which the probationer is transferred.~~

~~[(b) Any probationer who removes himself from the State of Texas without permission of the court having jurisdiction of the case shall be considered a fugitive from justice and shall be subject to extradition as now provided by law.~~

~~[Sec. 28. PROGRAM TO ASSESS AND ENHANCE PROBATIONER'S EDUCATIONAL AND VOCATIONAL SKILLS. (a) A community supervision and corrections department, with the assistance of public school districts, community and public junior colleges, public and private institutions of higher education, and other appropriate public and private entities, may establish a developmental program for a probationer under the supervision of the department on the basis of information developed under Section 11(g) of this article, as added by Chapter 260, Acts of the 71st Legislature, Regular Session, 1989.~~

~~[(b) The developmental program may provide the probationer with the educational and vocational training necessary to:~~

~~[(1) meet the average skill level required under Section 11(g) of this article, as added by Chapter 260, Acts of the 71st Legislature, Regular Session, 1989; and~~

~~[(2) maintain employment while under the supervision of the department, to lessen the likelihood that the probationer will commit additional offenses.~~

~~[(c) To decrease expenditures by community supervision and corrections departments for the educational and vocational skills assessment and enhancement program established under this section, the Texas Department of Commerce shall provide information to community supervision and corrections departments, public school districts, community and public junior colleges, public and private institutions of higher education, and other appropriate public and private entities for obtaining financial assistance through the Texas Job-Training Partnership Act (Article 4413(52), Vernon's Texas Civil Statutes) and other applicable programs of public or private entities.]~~



SECTION 4.02. (a) Except as provided by Subsection (b) of this section, the change in law made by this article to Article 42.12, Code of Criminal Procedure, applies only to a defendant charged with or convicted of an offense committed on or after the effective date of this article. For the purposes of this section, an offense is committed before the effective date of this article if any element of the offense occurs before that date. A defendant charged with or convicted of an offense committed before the effective date of this article is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

(b) A court may require the confinement and treatment of a defendant as a condition of probation under Section 14, Article 42.12, Code of Criminal Procedure, as added by this article, granted for an offense whether the offense is committed before, on, or after the effective date of this Act.

(c) To the extent that resources are available, the department shall:

(1) ensure that the services listed in this section are available for children, including adolescents, as well as adults, in each service area; ~~and~~

(2) emphasize early intervention services for children, including adolescents, who meet the department's definition of being at high risk of developing severe emotional disturbances or severe mental illnesses; ~~and~~

~~(3) ensure that services listed in this section are available for defendants required to submit to mental health treatment under Article 17.032 or Section 5(a) or 11(d), Article 42.12, Code of Criminal Procedure.~~

SECTION 4.03. From the effective date of this article until September 1, 1994, a reference in Article 42.12, Code of Criminal Procedure, as amended by this Act, to an offense under Chapter 49, Penal Code, shall be construed as a reference to the offense and the punishment provisions for the offense as they existed before the effective date of Article 1 of this Act.

SECTION 4.04. (a) Except as provided by Subsection (b) of this article, this article takes effect September 1, 1993.

(b) Section 15, Article 42.12, Code of Criminal Procedure, as added by this article, takes effect September 1, 1994.

#### ARTICLE 5

SECTION 5.01. Sections 3(d) and (f), Article 37.07, Code of Criminal Procedure, are amended to read as follows:

(d) When the judge assesses the punishment, he may order an investigative report as contemplated in Section 2 [4] of Article 42.12 of this code and after considering the report, and after the hearing of the evidence hereinabove provided for, he shall forthwith announce his decision in open court as to the punishment to be assessed.

~~(f) Evidence of the extent of a defendant's ability to pay a fine is admissible during the penalty phase of a trial. Notwithstanding any other law, a court may order the production of income tax records or other documents relating to the defendant in order to determine the defendant's ability to pay a fine, restitution, reward, or other payment legally assessed.~~

~~imposed, or ordered by a judge or jury [In cases in which the matter of punishment is referred to a jury, either party may offer into evidence the availability of community corrections facilities serving the jurisdiction in which the offense was committed].~~

SECTION 5.02. Section 4, Article 37.07, Code of Criminal Procedure, is amended to read as follows:

Sec. 4. (a) In the penalty phase of the trial of a felony case in which the punishment is to be assessed by the jury rather than the court, if the offense of which the jury has found the defendant guilty is listed in Section ~~8(b)(3), Article 42.18~~ [3g(a)(1), Article 42.12], of this code or if the judgment contains an affirmative finding under [Section ~~3g(a)(2),~~ Article ~~42.012~~ [42.12], of this code, ~~[unless the defendant has been convicted of a capital felony]~~ the court shall charge the jury in writing as follows:

“Under the law applicable in this case, the defendant, if sentenced to a term of imprisonment, may earn time off the period of incarceration imposed through the award of good conduct time. Prison authorities may award good conduct time to a prisoner who exhibits good behavior, diligence in carrying out prison work assignments, and attempts at rehabilitation. If a prisoner engages in misconduct, prison authorities may also take away all or part of any good conduct time earned by the prisoner.

“It is also possible that the length of time for which the defendant will be imprisoned might be reduced by the award of parole.

“Under the law applicable in this case, if the defendant is sentenced to a term of imprisonment, he will not become eligible for parole until the actual time served equals one-half ~~[one-fourth]~~ of the sentence imposed or 30 ~~[15]~~ years, whichever is less, without consideration of any good conduct time he may earn. If the defendant is sentenced to a term of less than four ~~[six]~~ years, he must serve at least two years before he is eligible for parole. Eligibility for parole does not guarantee that parole will be granted.

“It cannot accurately be predicted how the parole law and good conduct time might be applied to this defendant if he is sentenced to a term of imprisonment, because the application of these laws will depend on decisions made by prison and parole authorities.

“You may consider the existence of the parole law and good conduct time. However, you are not to consider the extent to which good conduct time may be awarded to or forfeited by this particular defendant. You are not to consider the manner in which the parole law may be applied to this particular defendant.”

(b) In the penalty phase of the trial of a felony case in which the punishment is to be assessed by the jury rather than the court, if the offense is punishable as a felony of the first degree, if a prior conviction has been alleged for enhancement of punishment as provided by Section 12.42(b), (c), or (d), Penal Code, or if the offense is a felony not designated as a capital felony or a felony of the first, second, or third degree and the maximum term of imprisonment that may be imposed for the offense is longer than 60 years, unless the offense of which the jury has found the defendant guilty is listed in Section ~~8(b)(3)~~ [3g(a)(1)],

Article ~~42.18~~ ~~[42.12]~~, of this code or the judgment contains an affirmative finding under ~~[Section 3g(a)(2);]~~ Article ~~42.012~~ ~~[42.12]~~, of this code, the court shall charge the jury in writing as follows:

"Under the law applicable in this case, the defendant, if sentenced to a term of imprisonment, may earn time off the period of incarceration imposed through the award of good conduct time. Prison authorities may award good conduct time to a prisoner who exhibits good behavior, diligence in carrying out prison work assignments, and attempts at rehabilitation. If a prisoner engages in misconduct, prison authorities may also take away all or part of any good conduct time earned by the prisoner.

"It is also possible that the length of time for which the defendant will be imprisoned might be reduced by the award of parole.

"Under the law applicable in this case, if the defendant is sentenced to a term of imprisonment, he will not become eligible for parole until the actual time served plus any good conduct time earned equals one-fourth of the sentence imposed or 15 years, whichever is less. Eligibility for parole does not guarantee that parole will be granted.

"It cannot accurately be predicted how the parole law and good conduct time might be applied to this defendant if he is sentenced to a term of imprisonment, because the application of these laws will depend on decisions made by prison and parole authorities.

"You may consider the existence of the parole law and good conduct time. However, you are not to consider the extent to which good conduct time may be awarded to or forfeited by this particular defendant. You are not to consider the manner in which the parole law may be applied to this particular defendant."

(c) In the penalty phase of the trial of a felony case in which the punishment is to be assessed by the jury rather than the court, if the offense is punishable as a felony of the second or third degree, if a prior conviction has been alleged for enhancement as provided by Section 12.42(a), Penal Code, or if the offense is a felony not designated as a capital felony or a felony of the first, second, or third degree and the maximum term of imprisonment that may be imposed for the offense is 60 years or less, unless the offense of which the jury has found the defendant guilty is listed in Section ~~8(b)(3)~~ ~~[3g(a)(1)]~~, Article ~~42.18~~ ~~[42.12]~~, of this code or the judgment contains an affirmative finding under ~~[Section 3g(a)(2);]~~ Article ~~42.012~~ ~~[42.12]~~, of this code, the court shall charge the jury in writing as follows:

"Under the law applicable in this case, the defendant, if sentenced to a term of imprisonment, may earn time off the period of incarceration imposed through the award of good conduct time. Prison authorities may award good conduct time to a prisoner who exhibits good behavior, diligence in carrying out prison work assignments, and attempts at rehabilitation. If a prisoner engages in misconduct, prison authorities may also take away all or part of any good conduct time earned by the prisoner.

"It is also possible that the length of time for which the defendant will be imprisoned might be reduced by the award of parole.

"Under the law applicable in this case, if the defendant is sentenced to a term of imprisonment, he will not become eligible for parole until the

actual time served plus any good conduct time earned equals one-fourth of the sentence imposed. Eligibility for parole does not guarantee that parole will be granted.

"It cannot accurately be predicted how the parole law and good conduct time might be applied to this defendant if he is sentenced to a term of imprisonment, because the application of these laws will depend on decisions made by prison and parole authorities.

"You may consider the existence of the parole law and good conduct time. However, you are not to consider the extent to which good conduct time may be awarded to or forfeited by this particular defendant. You are not to consider the manner in which the parole law may be applied to this particular defendant."

(d) This section does not permit the introduction of evidence on the operation of parole and good conduct time laws.

SECTION 5.03. Chapter 42, Code of Criminal Procedure, is amended by amending Articles 42.01-42.036, 42.08, and 42.09 and adding Articles 42.023 and 42.20 to read as follows:

Art. 42.01. JUDGMENT

Sec. 1. A judgment is the written declaration of the court signed by the trial judge and entered of record showing the conviction or acquittal of the defendant. The sentence served shall be based on the information contained in the judgment. The judgment should reflect:

1. The title and number of the case;
2. That the case was called and the parties appeared, naming the attorney for the state, the defendant, and the attorney for the defendant, or, where a defendant is not represented by counsel, that the defendant knowingly, intelligently, and voluntarily waived the right to representation by counsel;
3. The plea or pleas of the defendant to the offense charged;
4. Whether the case was tried before a jury or a jury was waived;
5. The submission of the evidence, if any;
6. In cases tried before a jury that the jury was charged by the court;
7. The verdict or verdicts of the jury or the finding or findings of the court;
8. In the event of a conviction that the defendant is adjudged guilty of the offense as found by the verdict of the jury or the finding of the court, and that the defendant be punished in accordance with the jury's verdict or the court's finding as to the proper punishment;
9. In the event of conviction where death or any ~~[nonprobated]~~ punishment is assessed that the defendant be sentenced to death, a term of confinement or community supervision ~~[imprisonment]~~, or to pay a fine, as the case may be;
10. In the event of conviction where ~~[any probated punishment is assessed that]~~ the imposition of sentence is suspended and the defendant is placed on community supervision ~~[probation]~~, setting forth the punishment assessed, the length of community supervision ~~[probation]~~, and the ~~[probationary terms and]~~ conditions of community supervision;

11. In the event of acquittal that the defendant be discharged;
12. The county and court in which the case was tried and, if there was a change of venue in the case, the name of the county in which the prosecution was originated;
13. The offense or offenses for which the defendant was convicted;
14. The date of the offense or offenses and degree of offense for which the defendant was convicted;
15. The term of sentence;
16. The date judgment is entered;
17. The date sentence is imposed;
18. The date sentence is to commence and any credit for time served;
19. The terms of any order entered pursuant to Article 42.08 of this code that the defendant's sentence is to run cumulatively or concurrently with another sentence or sentences;
20. The terms of any plea bargain;
21. Affirmative findings entered pursuant to ~~[Subdivision (2) of Subsection (a) of Section 3g of]~~ Article ~~42.012~~ ~~[42.12]~~ of this code;
22. The terms of any fee payment ordered under Articles 37.072 and 42.151 of this code;
23. The defendant's thumbprint taken in accordance with Article 38.33 of this code;
24. In the event that the judge orders the defendant to repay a reward or part of a reward under Articles 37.073 and 42.152 of this code, a statement of the amount of the payment or payments required to be made; and
25. In the event that the court orders restitution to be paid to the victim ~~[of a felony]~~, a statement of the amount of restitution ordered and:
  - (A) the name of the victim and the permanent mailing address of the victim at the time of the judgment; or
  - (B) if the court determines that the inclusion of the victim's name and address in the judgment is not in the best interest of the victim, the name and address of a person or agency that will accept and forward restitution payments to the victim.

Sec. 2. The judge may order the clerk of the court, the prosecuting attorney, or the attorney or attorneys representing any defendant to prepare the judgment, or the court may prepare the same.

Sec. 3. The provisions of this ~~article~~ ~~[Article]~~ shall apply to both felony and misdemeanor cases.

Sec. 4. The Office of Court Administration of the Texas Judicial System shall promulgate a standardized felony judgment form that conforms to the requirements of Section 1 of this article. ~~[A copy of the promulgated form shall be mailed to all district courts hearing criminal cases on or before October 1, 1985.]~~

~~[Art. 42.011. RISK ASSESSMENT INSTRUMENTS. (a) Not later than the 30th day after the date on which a court pronounces sentence in a felony case, the court shall submit a risk assessment instrument to the community justice assistance division of the Texas Department of Criminal Justice on a form provided by the division. If the court does not suspend~~

~~a sentence of confinement in the case or sentence a defendant under Section 12.34(a)(2), Penal Code, the court shall attach a statement of its reasons to the form:~~

~~[(b) The division shall develop and distribute forms for use under Subsection (a) of this article not later than September 1, 1990.]~~

Art. 42.014. FINDING THAT OFFENSE WAS COMMITTED BECAUSE OF BIAS OR PREJUDICE. In the trial of an offense under the Penal Code, if the court determines that the defendant committed an offense because of bias or prejudice against a person or a group, the court shall make an affirmative finding of that fact and enter the affirmative finding in the judgment of that case.

(5) Add a new appropriately numbered article to the bill to read as follows and renumber the remaining articles as appropriate:

Art. 42.02. SENTENCE. The sentence is that part of the judgment, or order revoking a suspension of the imposition of a [probated] sentence, that orders that the punishment be carried into execution in the manner prescribed by law.

Art. 42.023. JUDGE MAY CONSIDER ALTERNATIVE SENTENCING. Before pronouncing sentence on a defendant convicted of a criminal offense, the judge may consider whether the defendant should be committed for care and treatment under Section 462.081, Health and Safety Code.

Art. 42.03. PRONOUNCING SENTENCE; TIME; CREDIT FOR TIME SPENT IN JAIL BETWEEN ARREST AND SENTENCE OR PENDING APPEAL

Sec. 1. (a) Except as provided in Article 42.14, sentence shall be pronounced in the defendant's presence.

(b) The court shall permit a victim, close relative of a deceased victim, or guardian of a victim, as defined by Article 56.01 of this code, to appear in person to present to the court a statement of the person's views about the offense, the defendant, and the effect of the offense on the victim. The court reporter may not transcribe the statement. The statement must be made:

(1) after punishment has been assessed and the court has determined whether or not to grant community supervision [probation] in the case;

(2) after the court has announced the terms and conditions of the sentence; and

(3) after sentence is pronounced [~~and shall not be transcribed by the court reporter~~].

Sec. 2. (a) In all criminal cases the judge of the court in which the defendant was convicted shall give the defendant credit on his sentence [~~or period of confinement served as a condition of probation~~] for the time that the defendant has spent in jail in said cause, other than confinement served as a condition of community supervision, from the time of his arrest and confinement until his sentence by the trial court.

(b) In all [~~felony probation~~] revocations of a suspension of the imposition of a sentence the judge shall enter the restitution or reparation due and owing on the date of the revocation [~~of probation~~].

Sec. 3. If a defendant appeals his conviction, is not released on bail, and is retained in a [local] jail as provided in Section 7 [5], Article 42.09, pending his appeal, the judge of the court in which the defendant was convicted shall give the defendant credit on his sentence for the time that the defendant has spent in jail pending disposition of his appeal. The court shall endorse on both the commitment and the mandate from the appellate court all credit given the defendant under this section, and the institutional division of the Texas Department of Criminal Justice [Corrections] shall grant the credit in computing the defendant's eligibility for parole and discharge.

Sec. 4. When a defendant who has been sentenced to imprisonment in the institutional division of the Texas Department of Criminal Justice [Corrections] has spent time in jail pending trial and sentence or pending appeal, the judge of the sentencing court shall direct the sheriff to attach to the commitment papers a statement assessing the defendant's conduct while in jail.

~~[Sec. 7. (a) If jail time is awarded to a person sentenced for an offense under Section 25.05, Penal Code, or if the person is required to serve a period of confinement as a condition of probation, the judge, at the time of the pronouncement of the sentence or at any time while the person is serving the sentence or period of confinement, on the judge's own motion or on the written motion of the defendant, may permit the defendant to serve the sentence or period of confinement under house arrest, including electronic monitoring and any other conditions the court chooses to impose, during the person's off-work hours. The judge may require bail of the defendant to ensure the faithful performance of the sentence or period of confinement.~~

~~[(b) The court shall require as a condition to permitting the defendant to serve the jail time assessed or period of confinement imposed under house arrest a requirement that the defendant perform community service work specified by the court for a specified number of hours.~~

~~[(c) The court may require the defendant to pay any reasonable cost to the county incurred by the county because of the defendant's participation in the house arrest program, including the cost to the county for the defendant's participation in community service work and the cost of electronic monitoring.~~

~~[(d) The sentencing and confinement alternatives provided by this section are in addition to any other sentencing and confinement alternatives provided by law.~~

~~[Sec. 7A. A court in a county served by a district probation office that has an electronic monitoring program approved by the community justice assistance division of the Texas Department of Criminal Justice may require a defendant to serve all or part of a sentence of confinement in county jail or period of confinement served as a condition of probation by submitting to electronic monitoring rather than being confined in the county jail.~~

~~[Sec. 8. (a) A court may require a defendant to serve all or part of a sentence of confinement in county jail or period of confinement served as a condition of probation by performing community service rather than by being confined in county jail.~~

~~[(b) In its order requiring a defendant to participate in community service work, the court must specify:~~

~~[(1) the number of hours the defendant is required to work;~~

~~[(2) the entity or organization for which the defendant is required to work;~~

~~[(3) the project on which the defendant is required to work; and~~

~~[(4) whether the district probation department or a court-related services office will perform the administrative duties required by the placement of the defendant in the community service program.~~

~~[(c) The court may order the defendant to perform community service work under this section only for a governmental entity or a nonprofit organization that provides services to the general public that enhance social welfare and the general well-being of the community. A governmental entity or nonprofit organization that accepts a defendant under this section to perform community service must agree to supervise the defendant in the performance of the defendant's work and report on the defendant's work to the district probation department or court-related services office.~~

~~[(d) A court may not order a defendant to perform more than 16 hours per week of community service under this section unless the court determines that requiring the defendant to work additional hours does not work a hardship on the defendant or the defendant's dependents.~~

~~[(e) A defendant is considered to have served one day in jail for each eight hours of community service performed under this section.~~

~~[(f) Notwithstanding the provisions of Subsection (d) of this section, a court may order a defendant who is not employed to perform up to 32 hours of community service under this section and may direct the defendant to use the remaining hours of the week to seek employment.~~

~~[(f) A sheriff, employee of a sheriff's department, county commissioner, county employee, county judge, employee of a community corrections and supervision department, restitution center, or officer or employee of a political subdivision other than a county is not liable for damages arising from an act or failure to act in connection with community service performed by an inmate pursuant to this article if the act or failure to act:~~

~~[(1) was performed pursuant to court order; and~~

~~[(2) was not intentional, wilfully or wantonly negligent, or performed with conscious indifference or reckless disregard for the safety of others.]~~

#### Art. 42.031. WORK RELEASE PROGRAM

Sec. 1. (a) The sheriff of each county may attempt to secure employment for each defendant ~~[prisoner]~~ sentenced to the county jail work release program under Article 42.034 of this code and each defendant confined in the county jail awaiting transfer to the institutional division of the Texas Department of Criminal Justice ~~[or permitted under that article to participate in the program as an alternative to serving a period of confinement as a condition of probation].~~

(b) The employer of a defendant ~~[prisoner]~~ participating in a program under this article shall pay the defendant's ~~[prisoner's]~~ salary to the sheriff. The sheriff shall deposit the salary into a special fund to be given to the defendant ~~[prisoner]~~ on his release after deducting:



(1) the cost to the county~~[-as determined by the commissioners court of the county]~~ for the defendant's confinement ~~[prisoner's incarceration]~~ during the pay period based on the average daily cost of confining defendants in the county jail, as determined by the commissioners court of the county;

(2) support of the defendant's ~~[prisoner's]~~ dependents; and

(3) restitution to the victims of an offense committed by the defendant ~~[prisoner]~~.

(c) At the time of sentencing or at a later date, the court sentencing a defendant ~~[prisoner]~~ may direct the sheriff not to deduct the cost described under Subdivision (1) of Subsection (b) of this section or to deduct only a specified portion of the cost if the court determines that the full deduction would cause a significant financial hardship to the defendant's ~~[prisoner's]~~ dependents.

(d) If the sheriff does not find employment for a defendant ~~[prisoner]~~ who would otherwise be sentenced to imprisonment ~~[or confined as a condition of probation]~~ in the institutional division, the sheriff shall:

(1) transfer the defendant ~~[prisoner]~~ to the sheriff of a county who agrees to accept the defendant ~~[prisoner]~~ as a participant in the county jail work release program; or

(2) retain the defendant ~~[prisoner]~~ in the county jail for employment as soon as possible in a jail work release program.

~~[(e) A sheriff or an employee of a sheriff's department is not liable for damages arising from an act or failure to act by the sheriff or employee in connection with a work program operated under this section if the act or failure to act was performed in an official capacity.]~~

Sec. 2. A defendant ~~[prisoner]~~ participating in a program under this article shall be confined in the county jail or in another facility designated by the sheriff at all times except for:

(1) time spent at work and traveling to or from work; and

(2) time spent attending or traveling to or from an education or rehabilitation program approved by the sheriff.

Sec. 3. (a) The sheriff of each county shall classify each felon serving a sentence in the county jail work release program ~~[or participating in that program as an alternative to serving a period of confinement as a condition of probation]~~ for the purpose of awarding good conduct time credit in the same manner as inmates of the institutional division of the Texas Department of Criminal Justice ~~[Corrections]~~ are classified under Chapter 498, Government Code, and shall award good conduct time in the same manner as the director of the department does in that chapter ~~[article]~~.

(b) If at a hearing requested by a sheriff the court that sentenced the defendant ~~[prisoner]~~ to participation in a county jail work release program determines that the defendant ~~[prisoner]~~ is conducting himself in a manner that is dangerous to inmates in the county jail or to society as a whole, the court shall order the defendant's ~~[prisoner's]~~ participation in the program terminated and order the defendant ~~[prisoner]~~ to the term ~~[or period of confinement or the term]~~ of imprisonment that the defendant ~~[prisoner]~~ would have received had he not entered the program. The

defendant ~~[prisoner]~~ shall receive as credit toward his sentence ~~[or period of confinement]~~ any time served as a participant in the program.

Art. 42.032. GOOD CONDUCT

Sec. 1. To encourage county jail discipline, a distinction may be made to give orderly, industrious, and obedient defendants ~~[prisoners]~~ the comforts and privileges they deserve. The reward for good conduct may consist of a relaxation of strict county jail rules and extension of social privileges consistent with proper discipline.

Sec. 2. The sheriff in charge of each county jail may grant commutation of time for good conduct, industry, and obedience. A deduction not to exceed one day for each day of the original sentence actually served may be made for the term or terms of sentences ~~[or periods of confinement served as conditions of probation]~~ if a charge of misconduct has not been sustained against the defendant ~~[prisoner]~~.

Sec. 3. This article applies whether or not the judgment of conviction is a fine or jail sentence or both ~~[or whether the confinement is a condition of probation]~~, but the deduction in time may not exceed one-third of the original sentence as to fines and court costs assessed in the judgment of conviction ~~[or one-third of the period of confinement ordered as a condition of probation]~~.

Sec. 4. A defendant ~~[prisoner]~~ serving two or more cumulative sentences shall be allowed commutation as if the sentences were one sentence~~[- and a probationer serving two or more periods of confinement as conditions of probation in more than one case shall be allowed commutation as if the periods were conditions of one grant of probation]~~.

Sec. 5. Any part or all of the commutation accrued under this article may be forfeited and taken away by the sheriff for a sustained charge of misconduct in violation of any rule known to the defendant ~~[prisoner]~~, including escape or attempt to escape, if the sheriff has complied with discipline proceedings as approved by the Commission on Jail Standards.

Sec. 6. Except for credit earned by a defendant ~~[an inmate]~~ under Article 43.10, no other time allowance or credits in addition to the commutation of time under this article may be deducted from the term or terms of sentences ~~[or periods of confinement served as a condition of probation]~~.

Sec. 7. The sheriff shall keep a conduct record in card or ledger form and a calendar card on each defendant ~~[inmate]~~ showing all forfeitures of commutation time and the reasons for the forfeitures.

Art. 42.033. SENTENCE TO SERVE TIME DURING OFF-WORK HOURS. (a) Where jail time has been awarded to a person sentenced for a misdemeanor or sentenced to confinement in the county jail for a felony or when a defendant is serving a period of confinement as a condition of community supervision ~~[probation]~~, the trial judge, at the time of the pronouncement of sentence or at any time while the defendant is serving the sentence or period of confinement, when in the judge's discretion the ends of justice would best be served, may permit the defendant to serve the defendant's sentence or period of confinement intermittently during his off-work hours or on weekends. The judge may require bail of the defendant to ensure the faithful performance of the sentence or period of

confinement. The judge may attach conditions regarding the employment, travel, and other conduct of the defendant during the performance of such a sentence or period of confinement.

(b) The court may impose as a condition to permitting a defendant to serve the jail time assessed or period of confinement ~~intermittently [during off-work hours or on weekends]~~ an additional requirement that the defendant make any of the following payments to the court, agencies, or persons, or that the defendant execute a letter and direct it to the defendant's employer directing the employer to deduct from the defendant's salary an amount directed by the court, which is to be sent by the employer to the clerk of the court. The money received by the court under this section may be used to pay the following expenses as directed by the court:

- (1) the support of the defendant's dependents, if necessary;
- (2) the defendant's documented personal, business, and travel expenses;
- (3) reimbursement of the general fund of the county for the maintenance of the defendant in jail; and
- (4) installment payments on restitution, fines, and court costs ordered by the court.

(c) The condition imposed under Subsection (b) of this article is not binding on an employer, except that income withheld for child support is governed by Chapter 14, Family Code.

(d) The court may permit the defendant to serve the defendant's sentence or period of confinement ~~intermittently [during the defendant's off-work hours or on weekends]~~ in order for the defendant to continue employment if the court imposes confinement for failure to pay a fine or court costs, as punishment for criminal nonsupport under Section 25.05, Penal Code, or for contempt of a court order for periodic payments for the support of a child.

(e) The court may permit the defendant to seek employment or obtain medical, psychological, or substance abuse treatment or counseling or obtain training or needed education under the same terms and conditions that apply to employment under this article.

Art. 42.034. COUNTY JAIL WORK RELEASE PROGRAM. (a) If jail time has been awarded to a person sentenced for a misdemeanor or sentenced to confinement in the county jail for a felony ~~[or when a defendant is serving a period of confinement as a condition of probation]~~, the trial judge at the time of pronouncement of sentence or at any time while the defendant is serving the sentence ~~[or period of confinement]~~, when in the judge's discretion the ends of justice would best be served, may permit the defendant to serve an alternate term for the same period of time in the county jail work release program of the county in which the offense occurred ~~if:~~

~~[(1) the trier of fact determines that the defendant did not cause the serious bodily injury or death of another as a result of the commission of the offense; and~~

~~[(2) the judgment for the offense does not contain an affirmative finding under Section 3g(a)(2), Article 42.12, of this code].~~

(b) A defendant sentenced under this section ~~[or serving a period of confinement]~~ who would otherwise be sentenced to confinement in jail ~~[or required to serve a period of confinement in jail]~~ may earn good conduct credit in the same manner as provided by Article 42.032 of this code [Section 1, Chapter 461, Acts of the 54th Legislature, Regular Session, 1955 (Article 5118a, Vernon's Texas Civil Statutes)], but only while actually confined.

~~[(c) A sheriff or an employee of a sheriff's department is not liable for damages arising from an act or failure to act by the sheriff or employee in connection with a work program operated under this section if the act or failure to act was performed in an official capacity.]~~

Art. 42.035. ELECTRONIC MONITORING; HOUSE ARREST. (a) A court in a county served by a community supervision and corrections department [district probation office] that has an electronic monitoring program approved by the community justice assistance division of the Texas Department of Criminal Justice [Adult Probation Commission] may require a defendant to serve all or part of a sentence of confinement in county jail by submitting to electronic monitoring rather than being confined in the county jail.

(b) A judge, at the time of the pronouncement of a sentence of confinement or at any time while the defendant is serving the sentence, on the judge's own motion or on the written motion of the defendant, may permit the defendant to serve the sentence under house arrest, including electronic monitoring and any other conditions the court chooses to impose, during the person's off-work hours. The judge may require bail of the defendant to ensure the faithful performance of the sentence.

(c) The court may require the defendant to pay to the community supervision and corrections department or the county any reasonable cost incurred because of the defendant's participation in the house arrest program, including the cost of electronic monitoring.

(d) A defendant who submits to electronic monitoring or participates in the house arrest program under [Subsection (a) of] this section discharges a sentence of confinement without deductions, good conduct time credits, or commutations.

Art. 42.036. COMMUNITY SERVICE. (a) A court may require a defendant, other than a defendant convicted of an offense under Sections 49.04-49.08, Penal Code, to serve all or part of a sentence of confinement or period of confinement required as a condition of community supervision [probation] in county jail by performing community service rather than by being confined in county jail unless the sentence of confinement was imposed by the jury in the case.

(b) In its order requiring a defendant to participate in community service work, the court must specify:

- (1) the number of hours the defendant is required to work; and
- (2) the entity or organization for which the defendant is required to work;

~~[(3) the project on which the defendant is required to work; and~~

~~[(4) whether the district probation department or a court-related services office will perform the administrative duties required by the placement of the defendant in the community service program].~~

(c) The court may order the defendant to perform community service work under this article only for a governmental entity or a nonprofit organization that provides services to the general public that enhance social welfare and the general well-being of the community. A governmental entity or nonprofit organization that accepts a defendant under this section to perform community service must agree to supervise the defendant in the performance of the defendant's work and report on the defendant's work to the community supervision and corrections ~~[district probation]~~ department or court-related services office.

(d) The court may require bail of a defendant to ensure the defendant's faithful performance of community service and may attach conditions to the bail as it determines are proper.

(e) A court may not order a defendant who is employed to perform more than 16 hours per week of community service under this article ~~[section]~~ unless the court determines that requiring the defendant to work additional hours does not work a hardship on the defendant or the defendant's dependents. A court may not order a defendant who is unemployed to perform more than 32 hours per week of community service under this article, but may direct the defendant to use the remaining hours of the week to seek employment.

(f) A defendant is considered to have served one day in jail for each eight hours of community service performed under this article ~~[section]~~.

~~[(g) An officer or an employee of a governmental entity is not liable for damages arising from an act or failure to act by the officer or employee in connection with a community service program operated under this section if the act or failure to act was performed in an official capacity.~~

~~[(h) A sheriff, employee of a sheriff's department, county commissioner, county employee, county judge, employee of a community corrections and supervision department, restitution center, or officer or employee of a political subdivision other than a county is not liable for damages arising from an act or failure to act in connection with community service performed by an inmate pursuant to this article if the act or failure to act:~~

~~[(1) was performed pursuant to court order; and~~

~~[(2) was not intentional, wilfully or wantonly negligent, or performed with conscious indifference or reckless disregard for the safety of others.]~~

Art. 42.08. CUMULATIVE OR CONCURRENT SENTENCE. (a) When the same defendant has been convicted in two or more cases, judgment and sentence shall be pronounced in each case in the same manner as if there had been but one conviction. Except as provided by Sections (b) and (c) of this article, in the discretion of the court, the judgment in the second and subsequent convictions may either be that the sentence imposed or suspended shall begin when the judgment and the sentence imposed or suspended in the preceding conviction has ceased to operate, or that the sentence imposed or suspended shall run concurrently with the other case or cases, and sentence and execution shall be accordingly; provided, however, that the cumulative total of suspended

sentences in felony cases shall not exceed 5 [~~10~~] years, and the cumulative total of suspended sentences in misdemeanor cases shall not exceed the maximum period of confinement [~~imprisonment~~] in jail applicable to the misdemeanor offenses, though in no event more than three years, including extensions of periods of community supervision [~~probation~~] under Section 22 [~~24~~], Article 42.12, of this code, if none of the offenses are offenses under Chapter 49, Penal Code [~~Article 67011-1, Revised Statutes~~], or four years, including extensions, if any of the offenses are offenses under Chapter 49, Penal Code [~~Article 67011-1, Revised Statutes~~].

(b) If a defendant is sentenced for an offense committed while the defendant was an inmate [~~a prisoner~~] in the institutional division of the Texas Department of Criminal Justice [~~Corrections~~] and the defendant has not completed the sentence he was serving at the time of the offense, the judge shall order the sentence for the subsequent offense to commence immediately on completion of the sentence for the original offense.

(c) If a defendant has been convicted in two or more cases and the court suspends the imposition of the sentence in one of the cases, the court may not order a sentence of confinement to commence on the completion of a suspended sentence for an offense.

(d) For the purposes of Chapter 12, Penal Code, the imposition by a court of:

(A) concurrent sentences is a single conviction; and

(B) consecutive sentences are multiple convictions, with the number of convictions equaling the number of sentences the court orders to run consecutively.

Art. 42.09. COMMENCEMENT OF SENTENCE; STATUS DURING APPEAL; PEN PACKET [~~AND DELIVERY TO PLACE OF CONFINEMENT~~]

Sec. 1. Except as provided in Sections 2 and 3, a defendant shall be delivered to a jail or to the institutional division of the Texas Department of Criminal Justice [~~Corrections~~] when his sentence [~~to imprisonment~~] is pronounced, or his sentence to death is announced, by the court. The defendant's sentence begins to run on the day it is pronounced, but with all credits, if any, allowed by Article 42.03.

Sec. 2. If a defendant appeals his conviction and is released on bail pending disposition of his appeal, when his conviction is affirmed, the clerk of the trial court, on receipt of the mandate from the appellate court, shall issue a commitment against the defendant. The officer executing the commitment shall endorse thereon the date he takes the defendant into custody and the defendant's sentence begins to run from the date endorsed on the commitment. The institutional division of the Texas Department of Criminal Justice [~~Corrections~~] shall admit the defendant named in the commitment on the basis of the commitment.

Sec. 3. If a defendant is convicted of a felony and sentenced to death, life, or a term of more than ten years in the institutional division of the Texas Department of Criminal Justice [~~Corrections~~] and he gives notice of appeal, he shall be transferred to the institutional division [~~Department of Corrections~~] on a commitment pending a mandate from the court of appeals or the Court of Criminal Appeals.

Sec. 4. If a defendant is convicted of a felony and his sentence is a term of ten years or less and he gives notice of appeal, he shall be transferred to the institutional division of the Texas Department of Criminal Justice ~~[Corrections]~~ on a commitment pending a mandate from the court of appeals or the Court of Criminal Appeals upon request in open court or upon written request to the sentencing court. Upon a valid transfer to the institutional division ~~[Department of Corrections]~~ under this section, the defendant may not thereafter be released on bail pending his appeal.

Sec. 5. If a defendant is transferred to the institutional division of the Texas Department of Criminal Justice ~~[Corrections]~~ pending appeal under Section 3 or 4, his sentence shall be computed as if no appeal had been taken if the appeal is affirmed.

Sec. 6. All defendants who have been transferred to the institutional division of the Texas Department of Criminal Justice ~~[Corrections]~~ pending the appeal of their convictions under this article ~~[Article]~~ shall be under the control and authority of the institutional division ~~[Department of Corrections]~~ for all purposes as if no appeal were pending.

Sec. 7. If a defendant is sentenced to a term of imprisonment ~~[confinement]~~ in the institutional division of the Texas Department of Criminal Justice ~~[Corrections]~~ but is not transferred to the institutional division ~~[Department of Corrections]~~ under Section 3 or 4 of this article, the court, before the date on which it would lose jurisdiction under Section 6(a) ~~[3e]~~, Article 42.12, of this code, shall send to the department a document containing a statement of the date on which the defendant's sentence was pronounced and credits earned by the defendant under Article ~~[Section]~~ 42.03 of this code as of the date of the statement.

Sec. 8. (a) A county that transfers a defendant to the institutional division of the Texas Department of Criminal Justice ~~[Corrections]~~ under this article ~~[Article]~~ shall deliver to the director of the division ~~[department]~~:

(1) a copy of the judgment entered pursuant to Article 42.01 of this code, completed on a standardized felony judgment form described by Section 4 of that article ~~[Article]~~;

(2) a copy of any order revoking probation and imposing sentence pursuant to Section 23, ~~[8 of]~~ Article 42.12, of this code, including:

(A) any amounts owed for restitution, fines, and court costs, completed on a standardized felony judgment form described by Section 4, ~~[of]~~ Article 42.01, of this code; and

(B) a copy of the client supervision plan prepared for the defendant by the community supervision and corrections ~~[adult probation]~~ department supervising the defendant, if such a plan was prepared;

(3) a written report that states the nature and the seriousness of each offense and that states the citation to the provision or provisions of the Penal Code or other law under which the defendant was convicted;

(4) a copy of the victim impact statement, if one has been prepared in the case under Article 56.03 of this code;

(5) a statement as to whether there was a change in venue in the case and, if so, the names of the county prosecuting the offense and the county in which the case was tried;

(6) a copy of the record of arrest for each offense;  
(7) information regarding the criminal history of the defendant;  
(8) a copy of the indictment or information for each offense;  
(9) a checklist sent by the department to the county and completed by the county in a manner indicating that the documents required by this subsection and Subsection (c) of this section accompany the defendant; and  
(10) ~~a copy of the Criminal Justice Data Report prepared under Section 413.018, Government Code; and~~  
~~[(11)]~~ a copy of a presentence investigation report prepared under Section 9, Article 42.12 of this code.

(b) The institutional division of the Texas Department of Criminal Justice ~~[Corrections]~~ shall not take a defendant into custody under this article ~~[Article]~~ until the director receives the documents required by Subsections (a) and (c) of this section. The director shall certify under the seal of the institutional division the documents received under Subsections (a) and (c) of this section. A document certified under this subsection is self-authenticated for the purposes of Rules 901 and 902, Texas Rules of Criminal Evidence.

(c) A county that transfers a defendant to the institutional division of the Texas Department of Criminal Justice ~~[Corrections]~~ under this article ~~[Article]~~ shall also deliver to the director of the division ~~[department]~~ any presentence investigation report, ~~[probation]~~ revocation report, psychological or psychiatric evaluation of the defendant, and available social or psychological background information relating to the defendant and may deliver to the director any additional information upon which the judge or jury bases the punishment decision.

(d) The institutional division of the Texas Department of Criminal Justice ~~[Corrections]~~ shall make documents received under Subsections (a) and (c) of this section available to the pardons and paroles division ~~[Board of Pardons and Paroles]~~ on the request of the pardons and paroles division ~~[board or its representative]~~.

(e) A county is not required to deliver separate documents containing information relating to citations to provisions of the Penal Code or other law and to changes of venue, as otherwise required by Subsections (a)(3) and (a)(5) of this article ~~[Article]~~, if the standardized felony judgment form described by Section 4, ~~[of]~~ Article 42.01, of this code is modified to require that information.

(f) Except as provided by Subsection (g) of this section, the county sheriff is responsible for ensuring that documents and information required by this section accompany defendants sentenced by district courts in the county to terms of imprisonment ~~[confinement]~~ in the institutional division of the Texas Department of Criminal Justice ~~[Corrections]~~.

(g) If the presiding judge of the administrative judicial region in which the county is located determines that the county sheriff is unable to perform the duties required by Subsection (f) of this section, the presiding judge may impose those duties on:

- (1) the district clerk; or
- (2) the prosecutor of each district court in the county.



(b) If a parole panel ~~[the board]~~ releases on parole a person who is confined in a jail in this state, a federal correctional institution, or a correctional institution in another state, the pardons and paroles division of the Texas Department of Criminal Justice ~~[Board of Pardons and Paroles]~~ shall request the sheriff who would otherwise be required to transfer the person to the institutional division ~~[Texas Department of Corrections]~~ to forward to both divisions ~~[the board and to the department]~~ the information described by Subsections (a) and (c) of this section. The sheriff shall comply with the request of the pardons and paroles division ~~[board]~~. The pardons and paroles division ~~[board]~~ shall determine whether the information forwarded by the sheriff under this subsection contains a thumbprint taken ~~[fingerprint]~~ from the person in the manner provided by Article 38.33 of this code and, if not, the division ~~[board]~~ shall obtain a thumbprint taken in the manner provided by that article ~~[to fingerprint from the person, either by use of the ink-rolled print method or by use of a live-scanning device that prints the fingerprint image on paper,]~~ and shall forward the thumbprint ~~[to fingerprint]~~ to the institutional division ~~[department]~~ for inclusion with the information sent by the sheriff.

Art. 42.20. IMMUNITIES. (a) An individual listed in Subsection (c) of this article and the governmental entity that the individual serves as an officer or employee are not liable for damages arising from an act or failure to act by the individual or governmental entity in connection with a community service program or work program established under this chapter if the act or failure to act:

(1) was performed pursuant to a court order or was otherwise performed in an official capacity; and

(2) was not intentional, wilfully or wantonly negligent, or performed with conscious indifference or reckless disregard for the safety of others.

(b) Chapter 101, Civil Practice and Remedies Code, does not apply to a claim based on an act or a failure to act of an individual listed in Subsection (c) of this article or a governmental entity the officer serves as an officer or employee if the act or failure to act is in connection with a program described by Subsection (a) of this article.

(c) This article applies to:

(1) a director or employee of a community supervision and corrections department or a community corrections facility;

(2) a sheriff or employee of a sheriff's department;

(3) a county judge, county commissioner, or county employee;

(4) an officer or employee of a state agency; or

(5) an officer or employee of a political subdivision other than a county.

SECTION 5.04. Chapter 43, Code of Criminal Procedure, is amended by amending Articles 43.01, 43.03, 43.08, 43.09, 43.10, 43.101, 43.11, and 43.12 and adding Article 43.131 to read as follows:

Art. 43.01. DISCHARGING JUDGMENT FOR FINE. (a) When the sentence against an individual defendant is for fine and costs, he shall be discharged from the same:

(1) when the amount thereof has been fully paid; ~~[or]~~  
(2) when remitted by the proper authority; ~~[or]~~  
(3) when he has remained in custody for the time required by law to satisfy the amount thereof; or

(4) when the defendant has discharged the amount of fines and costs in any other manner permitted by this code.

(b) When the sentence against a defendant corporation or association is for fine and costs, it shall be discharged from same:

(1) when the amount thereof has been fully paid; ~~[or]~~  
(2) when the execution against the corporation or association has been fully satisfied; or

(3) when the judgment has been fully satisfied in any other manner.

Art. 43.03. PAYMENT OF FINE. (a) If a defendant is sentenced to pay a fine or costs or both and he defaults in payment, the court after a hearing under Subsection (d) of this article may order him confined [imprisoned] in jail until discharged as provided by law or may order him to discharge the fines and costs in any other manner provided by Article 43.09 of this code. A certified copy of the judgment, sentence, and order is sufficient to authorize confinement under this subsection ~~[such imprisonment]~~.

(b) A term of confinement [imprisonment] for default in payment of fine or costs or both may not exceed the maximum term of confinement [imprisonment] authorized for the offense for which the defendant was sentenced to pay the fine or costs or both. If a court orders a term of confinement for default in payment of fines or costs under this article at a time during which a defendant is serving another term of confinement for default or is serving a term of confinement for conviction of an offense, the term of confinement for default runs concurrently with the other term of confinement, unless the court orders the terms to run consecutively under Article 42.08 of this code.

(c) If a defendant is sentenced both to confinement [imprisonment] and to pay a fine or costs or both, and he defaults in payment of either, a term of confinement [imprisonment] for the default, when combined with the term of confinement [imprisonment] already assessed, may not exceed the maximum term of confinement [imprisonment] authorized for the offense for which the defendant was sentenced.

(d) A court may not order a defendant confined under Subsection (a) of this article unless the court at a hearing:

(1) determines that the defendant is not indigent or determines that the defendant wilfully refused to pay or failed to make sufficient bona fide efforts legally to acquire the resources to pay and enters that determination in writing in the court docket; and

(2) determines that no alternative method of discharging fines and costs provided by Article 43.09 of this code is appropriate for the defendant.

Art. 43.08. FURTHER ENFORCEMENT OF JUDGMENT. (a) When a defendant has been committed to jail in default of the fine and costs

adjudged against him, the further enforcement of such judgment and sentence shall be in accordance with the provisions of this Code.

(b) The attorney representing the state may, for the purpose of obtaining information to aid in the enforcement of a judgment, initiate and maintain in the court in which the judgment was rendered any discovery proceeding authorized in civil pretrial matters. The rules governing and related to pretrial discovery proceedings in civil matters apply to discovery under this article.

(c) The attorney representing the state may seek collection of the judgment through court proceedings as in civil matters. The rules governing and related to the collection of judgments in civil matters apply to judgments rendered in criminal matters.

(d) A defendant may not discharge by confinement in the county jail any additional cost or fee taxed against the defendant as a result of an attempt to collect a judgment in a criminal matter.

Art. 43.09. FINE DISCHARGED. (a) When a defendant is convicted of a misdemeanor and his punishment is assessed at a pecuniary fine, if he is unable to pay the fine and costs adjudged against him, he may for such time as will satisfy the judgment be put to work in the workhouse, or on the county farm, or public improvements of the county or a political subdivision located in whole or in part in the county, as provided in the succeeding article ~~[Article]~~; or if there be no such workhouse, farm or improvements, he shall be confined ~~[imprisoned]~~ in jail for a sufficient length of time to discharge the full amount of fine and costs adjudged against him; rating such confinement ~~[imprisonment]~~ at \$50 for each day and rating such labor at \$50 for each day; provided, however, that the defendant may pay the pecuniary fine assessed against him at any time while he is serving at work in the workhouse, or on the county farm, or on the public improvements of the county or a political subdivision located in whole or in part in the county, or while he is serving his jail sentence, and in such instances he shall be entitled to the credit he has earned under this subsection during the time that he has served and he shall only be required to pay his balance of the pecuniary fine assessed against him. A defendant who performs labor under this article during a day in which he is confined ~~[imprisoned]~~ is entitled to both the credit for confinement ~~[imprisonment]~~ and the credit for labor provided by this article.

(b) In its discretion, the court may order that for each day's confinement served by a defendant under this article ~~[Article]~~, the defendant receive credit toward payment of the pecuniary fine and credit toward payment of costs adjudged against the defendant. Additionally, the court may order that the defendant receive credit under this article ~~[Article]~~ for each day's confinement served by the defendant as punishment for the offense.

(c) In its discretion, the court may order that a defendant serving concurrent, but not consecutive, sentences for two or more misdemeanors may, for each day served, receive credit toward the satisfaction of costs and fines imposed for each separate offense.

(d) Notwithstanding any other provision of this article, in its discretion, the court or the sheriff of the county may grant an additional

two days credit for each day served to any inmate participating in an approved work program under this article or a rehabilitation, restitution, or education program.

(e) A court in a county served by a community supervision and corrections department that has an electronic monitoring program approved by the community justice assistance division of the Texas Department of Criminal Justice may require a defendant who is unable to pay a fine or costs to discharge all or part of the fine or costs by submitting to electronic monitoring. A defendant that submits to electronic monitoring under this subsection discharges fines and costs in the same manner as if the defendant were confined in county jail.

(f) A court may require a defendant who is unable to pay a fine or costs to discharge all or part of the fine or costs by performing community service.

(g) In its order requiring a defendant to participate in community service work under Subsection (f) of this article, the court must specify:

(1) the number of hours the defendant is required to work; and  
(2) ~~[the entity or organization for which the defendant is required to work;~~

~~[(3) the project on which the defendant is required to work; and~~  
~~[(4) whether the community supervision and corrections [district probation] department or a court-related services office will perform the administrative duties required by the placement of the defendant in the community service program.~~

(h) The court may order the defendant to perform community service work under Subsection (f) of this article only for a governmental entity or a nonprofit organization that provides services to the general public that enhance social welfare and the general well-being of the community. A governmental entity or nonprofit organization that accepts a defendant under Subsection (f) of this article to perform community service must agree to supervise the defendant in the performance of the defendant's work and report on the defendant's work to the district probation department or court-related services office.

(i) The court may require bail of a defendant to ensure the defendant's faithful performance of community service under Subsection (f) of this article and may attach conditions to the bail as it determines are proper.

(j) A court may not order a defendant to perform more than 16 hours per week of community service under Subsection (f) of this article unless the court determines that requiring the defendant to work additional hours does not work a hardship on the defendant or the defendant's dependents.

(k) A defendant is considered to have discharged \$50 of fines or costs for each eight hours of community service performed under Subsection (f) of this article.

~~[(l) A sheriff, employee of a sheriff's department, county commissioner, county employee, county judge, an employee of a community corrections and supervision department, restitution center, or officer or employee of a political subdivision other than a county is not liable for damages arising from an act or failure to act in connection with~~

~~manual labor performed by an inmate pursuant to this article if the act or failure to act:~~

~~[(1) was performed pursuant to court order; and~~

~~[(2) was not intentional, wilfully or wantonly negligent, or performed with conscious indifference or reckless disregard for the safety of others.]~~

Art. 43.10. ~~[To Do]~~ MANUAL LABOR. ~~[(a)]~~ Where the punishment assessed in a conviction for misdemeanor is confinement in jail for more than one day, or where in such conviction the punishment is assessed only at a pecuniary fine and the party so convicted is unable to pay the fine and costs adjudged against him, or where the party convicted is required to serve a period of confinement as a condition of community supervision ~~[probation]~~, the party convicted or required to serve the period of confinement shall be required to do manual labor in accordance with the provisions of this article ~~[Article]~~ under the following rules and regulations:

1. Each commissioners court may provide for the erection of a workhouse and the establishment of a county farm in connection therewith for the purpose of utilizing the labor of said parties so convicted or required to serve a period of confinement;

2. Such farms and workhouses shall be under the control and management of the sheriff, and the sheriff may adopt such rules and regulations not inconsistent with the rules and regulations of the Texas Commission on Jail Standards and with the laws as the sheriff deems necessary;

3. Such overseers and guards may be employed by the sheriff under the authority of the commissioners court as may be necessary to prevent escapes and to enforce such labor, and they shall be paid out of the county treasury such compensation as the commissioners court may prescribe;

4. They shall be put to labor upon public works, including public works for a political subdivision located in whole or in part in the county;

5. One who from age, disease, or other physical or mental disability is unable to do manual labor shall not be required to work. His inability to do manual labor may be determined by a physician appointed for that purpose by the county judge or the commissioners court, who shall be paid for such service such compensation as said court may allow; and

6. For each day of manual labor, in addition to any other credits allowed by law, a defendant ~~[prisoner]~~ is entitled to have one day deducted from each sentence or period of confinement he is serving. The deduction authorized by this article, when combined with the deduction required by Article 42.10, Code of Criminal Procedure, may not exceed two-thirds (2/3) of the sentence or period of confinement.

~~[(b) A sheriff, employee of a sheriff's department, county commissioner, county employee, county judge, and employee of a community corrections and supervision department, restitution center, or officer or employee of a political subdivision other than a county is not liable for damages arising from an act or failure to act in connection with manual labor performed by an inmate pursuant to this article if the act or failure to act:~~

~~[(1) was performed pursuant to court order; and~~

~~[(2) was not intentional, wilfully or wantonly negligent, or performed with conscious indifference or reckless disregard for the safety of others.]~~

Art. 43.101. VOLUNTARY WORK ~~[by Pretrial Detainees]~~. (a) A defendant confined in county jail awaiting trial or a defendant confined in county jail after conviction of a felony and awaiting transfer to the institutional division of the Texas Department of Criminal Justice may volunteer to participate in any work program operated by the sheriff that uses the labor of convicted defendants.

(b) The sheriff may accept a defendant as a volunteer under Subsection (a) of this section if the defendant is not awaiting trial for an offense involving violence or is not awaiting transfer to the institutional division of the Texas Department of Criminal Justice after conviction of a felony involving violence, and if the sheriff determines that the inmate has not engaged previously in violent conduct and does not pose a security risk to the general public if allowed to participate in the work program.

(c) A defendant participating in a work program under this section is not a state employee for the purposes of Article 8309g or 8309h, Revised Statutes. ~~[The limitations on liability of a county for damages suffered by an inmate participating in a work program operated by the sheriff apply to a defendant who volunteers under Subsection (a) of this article in the same manner as if the inmate were participating in the program after conviction of an offense.]~~

Art. 43.11. AUTHORITY FOR Confinement ~~[Imprisonment]~~. When, by the judgment and sentence of the court, a defendant is to be confined ~~[imprisoned]~~ in jail, a certified copy of such judgment and sentence shall be sufficient authority for the sheriff to place such defendant in jail.

Art. 43.12. CAPIAS FOR Confinement ~~[Imprisonment]~~. A capias issued for the arrest and commitment of one convicted of a misdemeanor, the penalty of which or any part thereof is a fine ~~[imprisonment in jail]~~, shall recite the judgment and sentence and command the sheriff to immediately bring [place] the defendant before the court ~~[in jail, to remain the length of time therein fixed]~~; and this writ shall be sufficient to authorize the sheriff to place the ~~[such]~~ defendant in jail until the defendant appears before the court.

Art. 43.131. IMMUNITIES. (a) An individual listed in Subsection (c) of this article and the governmental entity that the individual serves as an officer or employee are not liable for damages arising from an act or failure to act by the individual or governmental entity in connection with a community service program or work program established under this chapter if the act or failure to act:

(1) was performed pursuant to a court order or was otherwise performed in an official capacity; and

(2) was not intentional, wilfully or wantonly negligent, or performed with conscious indifference or reckless disregard for the safety of others.

(b) Chapter 101, Civil Practice and Remedies Code, does not apply to a claim based on an act or a failure to act of an individual listed in

Subsection (c) of this article or a governmental entity the officer serves as an officer or employee if the act or failure to act is in connection with a program described by Subsection (a) of this article.

(c) This article applies to:

(1) a director or employee of a community supervision and corrections department or a community corrections facility;

(2) a sheriff or employee of a sheriff's department;

(3) a county judge, county commissioner, or county employee;

(4) an officer or employee of a state agency; or

(5) an officer or employee of a political subdivision other than a county.

SECTION 5.05. Section 3(a), Article 37.07, Code of Criminal Procedure, is amended to read as follows:

(a) Regardless of the plea and whether the punishment be assessed by the judge or the jury, evidence may[~~as permitted by the Rules of Evidence;~~] be offered by the state and the defendant as to any matter the court deems relevant to sentencing, including but not limited to the prior criminal record of the defendant, his general reputation, ~~and~~ his character, an opinion regarding his character, the circumstances of the offense for which he is being tried, and, notwithstanding Rules 404 and 405, Texas Rules of Criminal Evidence, any other evidence of an extraneous crime or bad act that is shown by clear and convincing evidence to have been committed by the defendant or for which he could be held criminally responsible, regardless of whether he has previously been charged with or finally convicted of the crime or act. ~~[The term prior criminal record means a final conviction in a court of record, or a probated or suspended sentence that has occurred prior to trial, or any final conviction material to the offense charged.]~~ A court may consider as a factor in mitigating punishment the conduct of a defendant while participating in a program under Article 17.40 or 17.42(a) of this code as a condition of release on bail. Additionally, notwithstanding Rule 609(d), Texas Rules of Criminal Evidence, evidence may be offered by the state and the defendant of an adjudication of delinquency based on a violation by the defendant of a penal law of the grade of felony unless:

(1) the adjudication is based on conduct committed more than five years before the commission of the offense for which the person is being tried; and

(2) in the five years preceding the date of the commission of the offense for which the person is being tried, the person did not engage in conduct for which the person has been adjudicated as a delinquent child or a child in need of supervision and did not commit an offense for which the person has been convicted.

SECTION 5.06. Article 45.54, Code of Criminal Procedure, is amended to read as follows:

Art. 45.54. SUSPENSION OF SENTENCE AND DEFERRAL OF FINAL DISPOSITION. (1) On a plea of guilty or nolo contendere by a defendant or on a finding of guilt in a misdemeanor case punishable by fine only and payment of all court costs, the justice may defer further proceedings without entering an adjudication of guilt and place the

defendant on probation for a period not to exceed 180 days. This article does not apply to a misdemeanor case disposed of by Section 143A, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), or a serious traffic violation as defined in Section 3(26), Texas Commercial Driver's License Act (Article 6687b-2, Revised Statutes).

(2) During the deferral period, the justice may ~~[shall]~~ require the defendant to:

(A) successfully complete a Central Education Agency approved driving safety course, if the offense alleged is an offense involving the operation of a motor vehicle, other than a commercial motor vehicle, as defined in Subdivision (6), Section 3, Texas Commercial Driver's License Act (Article 6687b-2, Revised Statutes);~~[-]~~

~~(B) [(3) During said deferral period, the justice may require the defendant to:~~

~~[(a)]~~ post a bond in the amount of the fine assessed to secure payment of the fine;

~~(C) [(b)]~~ pay restitution to the victim of the offense in an amount not to exceed the fine assessed;

~~(D) [(c)]~~ submit to professional counseling; and

~~(E) [(d)]~~ comply with any other reasonable condition.

(3) ~~[(4)]~~ At the conclusion of the deferral period, if the defendant presents satisfactory evidence that he has complied with the requirements imposed, the justice shall dismiss the complaint, and it shall be clearly noted in the docket that the complaint is dismissed and that there is not a final conviction. Otherwise, the justice may proceed with an adjudication of guilt. After an adjudication of guilt, the justice may reduce the fine assessed or may then impose the fine assessed, less any portion of the assessed fine that has been paid. If the complaint is dismissed, a special expense not to exceed the amount of the fine assessed may be imposed.

(4) ~~[(5)]~~ If at the conclusion of the deferral period the defendant does not present satisfactory evidence that the defendant complied with the requirements imposed, the justice may impose the fine assessed or impose a lesser fine. The imposition of the fine or lesser fine constitutes a final conviction of the defendant.

(5) ~~[(6)]~~ Records relating to a complaint dismissed as provided by this article may be expunged under Article 55.01 of this code. If a complaint is dismissed under this article, there is not a final conviction and the complaint may not be used against the person for any purpose.

SECTION 5.07. From the effective date of this article to September 1, 1994, a reference in an article of the Code of Criminal Procedure, as amended by this article, to an offense under Chapter 49, Penal Code, shall be construed as a reference to the offense and the punishment provision for the offense as they existed before the effective date of Article 1 of this Act.

SECTION 5.08. (a) The change in law made by this article applies only to an offense committed on or after the effective date of this article. For purposes of this section, an offense is committed before the effective



date of this article if any element of the offense occurs before the effective date.

(b) An offense committed before the effective date of this article is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 5.09. This article takes effect on September 1, 1993.

#### ARTICLE 6

SECTION 6.01. Chapter 42, Code of Criminal Procedure, is amended by adding Article 42.012 to read as follows:

Art. 42.012. AFFIRMATIVE FINDING OF DEADLY WEAPON. A court shall make an affirmative finding under this article and the judge shall enter the finding in the judgment in the case if it is shown on the trial of a felony that a deadly weapon, as defined by Section 1.07, Penal Code, was used or exhibited during the commission of the offense or during immediate flight following the commission, and that the defendant used or exhibited the deadly weapon or was a party to the offense and knew that a deadly weapon would be used or exhibited.

SECTION 6.02. Sections 8(b)(2) and (b)(3), Article 42.18, Code of Criminal Procedure, are amended to read as follows:

(2) If a prisoner is serving a life sentence for a capital felony, the prisoner is not eligible for release on parole until the actual calendar time the prisoner has served, without consideration of good conduct time, equals 40 [35] calendar years.

(3) If a prisoner is serving a sentence for a first degree felony under Section 19.02 or 20.04, Penal Code, or any felony under Section 21.11(a)(1), 22.021, or 29.03, Penal Code [the offenses listed in Subdivision (1)(B), (C), or (D) of Section 3g(a), Article 42.12 of this code], or if the judgment contains an affirmative finding under Article 42.012 of this code [Subdivision (2) of Subsection (a) of Section 3g of that article], he is not eligible for release on parole until his actual calendar time served, without consideration of good conduct time, equals one-half [one-fourth] of the maximum sentence or 30 [45] calendar years, whichever is less, but in no event shall he be eligible for release on parole in less than two calendar years.

SECTION 6.03. Section 8(c), Article 42.18, Code of Criminal Procedure, is amended to read as follows:

(c) Except as otherwise provided by this subsection, a prisoner who is not on parole shall be released to mandatory supervision by order of a parole panel when the calendar time he has served plus any accrued good conduct time equal the maximum term to which he was sentenced. A prisoner released to mandatory supervision shall, upon release, be deemed as if released on parole. To the extent practicable, arrangements for the prisoner's proper employment, maintenance, and care shall be made prior to his release to mandatory supervision. The period of mandatory supervision shall be for a period equivalent to the maximum term for which the prisoner was sentenced less calendar time actually served on the sentence. The time served on mandatory supervision is calculated as calendar time. Every prisoner while on mandatory supervision shall remain in the legal custody of the state and shall be amenable to conditions of

supervision ordered by the parole panel. A prisoner may not be released to mandatory supervision if the prisoner is serving a sentence for an offense and the judgment for the offense contains an affirmative finding under ~~[Subdivision (2), Subsection (a), Section 3g,]~~ Article 42.012 ~~(42.12)~~, of this code or if the prisoner is serving a sentence for:

- (1) a first degree felony under Section 19.02, Penal Code (Murder);
- (2) a capital felony under Section 19.03, Penal Code (Capital Murder);
- (3) a first degree felony or a second degree felony under Section 20.04, Penal Code (Aggravated Kidnapping);
- (4) a second degree felony under Section 22.011, Penal Code (Sexual Assault);
- (5) a second degree or ~~first~~ ~~[third]~~ degree felony under Section 22.02, Penal Code (Aggravated Assault);
- (6) a first degree felony under Section 22.021, Penal Code (Aggravated Sexual Assault);
- (7) ~~[a first degree felony under Section 22.03, Penal Code (Deadly Assault on Law Enforcement or Corrections Officer or Court Participant);~~
- ~~[(8)]~~ a first degree felony under Section 22.04, Penal Code (Injury to a Child or an Elderly Individual);
- ~~(8)~~ ~~[(9)]~~ a first degree felony under Section 28.02, Penal Code (Arson);
- ~~(9)~~ ~~[(10)]~~ a second degree felony under Section 29.02, Penal Code (Robbery);
- ~~(10)~~ ~~[(11)]~~ a first degree felony under Section 29.03, Penal Code (Aggravated Robbery); or
- ~~(11)~~ ~~[(12)]~~ a first degree felony under Section 30.02, Penal Code (Burglary), if the offense is punished under Subsection (d)(2) or (d)(3) of that section.

SECTION 6.04. (a) The change in law made by this article to Article 42.18, Code of Criminal Procedure, applies only to a defendant sentenced for an offense committed on or after the effective date of this article. A defendant sentenced for an offense committed before the effective date of this article is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

(b) For the purposes of this section, an offense is committed before the effective date of this article if any element of the offense occurs before that date.

SECTION 6.05. This article takes effect September 1, 1993.

#### ARTICLE 7

SECTION 7.01. (a) Chapter 48, Code of Criminal Procedure, is amended by adding Article 48.05 to read as follows:

Art. 48.05. RESTORATION OF CIVIL RIGHTS. (a) An individual convicted of a federal offense other than an offense involving violence or the threat of violence or involving drugs or firearms may, except as provided by Subsection (b) of this article, submit an application for restoration of any civil rights forfeited under the laws of this state as a result of the conviction.

(b) An individual may not apply for restoration of civil rights under this article unless:

(1) the individual has completed the sentence for the federal offense;

(2) the conviction occurred three or more years before the date of application; and

(3) the individual has not been convicted at any other time of an offense under the laws of this state, another state, or the United States.

(c) An application for restoration of civil rights must contain:

(1) a completed application on a form adopted by the Board of Pardons and Paroles;

(2) three or more affidavits attesting to the good character of the applicant; and

(3) proof that the applicant has completed the sentence for the federal offense.

(d) The applicant must submit the application to:

(1) the sheriff of the county in which the applicant resides at the time of application or resided at the time of conviction of the federal offense, if the individual resided in this state at that time; or

(2) the Board of Pardons and Paroles.

(e) If an application is submitted to a sheriff, the sheriff shall review the application and recommend to the Board of Pardons and Paroles whether the individual's civil rights should be restored. If the sheriff recommends restoration of the individual's civil rights, the board may either:

(1) concur in the recommendation and forward the recommendation to the governor; or

(2) independently review the application to determine whether to recommend to the governor the restoration of the individual's civil rights.

(f) If the sheriff does not recommend the restoration of the individual's civil rights, the individual may apply directly to the Board of Pardons and Paroles.

(g) If an application is submitted to the Board of Pardons and Paroles without first being submitted to a sheriff, the board shall review the application and recommend to the governor as to whether the individual's civil rights should be restored.

(h) The Board of Pardons and Paroles may require or obtain additional information as necessary to perform a review under Subsection (e)(2) or Subsection (g) of this article.

(i) On receipt from the Board of Pardons and Paroles of a recommendation to restore the civil rights of an individual, the governor may either grant or deny the restoration of civil rights to the individual. If the governor grants the restoration of civil rights to the individual, the governor shall issue a certificate of restoration of civil rights.

(j) If an application under this article is denied by the Board of Pardons and Paroles or the governor, the individual may not file another application under this article before the first anniversary of the date of the denial.

(k) A restoration of civil rights under this article is a form of pardon that restores all civil rights under the laws of this state that an individual forfeits as a result of the individual's conviction of a federal offense, except as specifically provided in the certificate of restoration.

(b) Article 48.05, Code of Criminal Procedure, as added by this article, applies to an individual convicted of a federal offense committed before, on, or after the effective date of this Act.

SECTION 7.02. (a) Article 55.01, Code of Criminal Procedure, is amended to read as follows:

Art. 55.01. RIGHT TO EXPUNCTION. A person who has been arrested for commission of either a felony or misdemeanor is entitled to have all records and files relating to the arrest expunged if:

(1) the person is tried for the offense for which the person was arrested and is acquitted; or

(2) each of the following conditions exist:

(A) ~~[(1)]~~ an indictment or information charging him with commission of a felony has not been presented against him for an offense arising out of the transaction for which he was arrested or, if an indictment or information charging him with commission of a felony was presented, it has been dismissed and the court finds that it was dismissed because the presentment had been made because of mistake, false information, or other similar reason indicating absence of probable cause at the time of the dismissal to believe the person committed the offense or because it was void;

(B) ~~[(2)]~~ he has been released and the charge, if any, has not resulted in a final conviction and ~~is~~ is no longer pending and there was no court ordered probation under Article 42.12, Code of Criminal Procedure, nor a conditional discharge under Section 481.109, Health and Safety Code; and

(C) ~~[(3)]~~ he has not been convicted of a felony in the five years preceding the date of the arrest.

(b) The change in law to Article 55.01, Code of Criminal Procedure, made by this article permitting expunctions for persons acquitted of offenses applies to a defendant acquitted of an offense regardless of whether the offense was committed before, on, or after the effective date of this article.

SECTION 7.03. Chapter 38, Code of Criminal Procedure, is amended by adding Article 38.36 to read as follows:

Art. 38.36. EVIDENCE IN PROSECUTIONS FOR MURDER. (a) In all prosecutions for murder, the state or the defendant shall be permitted to offer testimony as to all relevant facts and circumstances surrounding the killing and the previous relationship existing between the accused and the deceased, together with all relevant facts and circumstances going to show the condition of the mind of the accused at the time of the offense.

(b) In a prosecution for murder, if a defendant raises as a defense a justification provided by Section 9.31, 9.32, or 9.33, Penal Code, the defendant, in order to establish the defendant's reasonable belief that use of force or deadly force was immediately necessary, shall be permitted to offer:

(1) relevant evidence that the defendant had been the victim of acts of family violence committed by the deceased, as family violence is defined by Section 71.01, Family Code; and

(2) relevant expert testimony regarding the condition of the mind of the defendant at the time of the offense, including those relevant facts and circumstances relating to family violence that are the basis of the expert's opinion.

SECTION 7.04. Section 14, Chapter 652, Acts of the 72nd Legislature, Regular Session, 1991, is repealed.

SECTION 7.05. (a) Except as provided by Subsection (b) of this section, this article takes effect September 1, 1993.

(b) Section 7.03 of this article takes effect September 1, 1994.

#### ARTICLE 8

SECTION \_\_.01. Article 5.05, Code of Criminal Procedure, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) A peace officer who investigates a family violence allegation or who responds to a disturbance call that may involve [has reason to believe that an offense involving] family violence [has occurred] shall make a written report, including but not limited to:

- (1) the names of the suspect and complainant;
- (2) the date, time, and location of the incident;
- (3) any visible or reported injuries; and
- (4) a description of the incident and a statement of its disposition.

(e) A peace officer who makes a report under Subsection (a) of this article shall provide information concerning the allegation or disturbance to the bureau of identification and records of the Department of Public Safety for its recordkeeping function under Section 411.042, Government Code. The bureau shall prescribe the form and nature of the information required to be reported to the bureau by this article.

SECTION \_\_.02. This article takes effect September 1, 1993.

#### ARTICLE 9

SECTION \_\_.\_\_. Chapter 42, Code of Criminal Procedure, is amended by adding Article 42.013 to read as follows:

Art. 42.013. FINDING OF FAMILY VIOLENCE. In the trial of an offense under Title 5, Penal Code, if the court determines that the offense involved family violence, as defined by Section 71.01, Family Code, the court shall make an affirmative finding of that fact and enter the affirmative finding in the judgment of the case.

SECTION \_\_.\_\_. Article 42.01, Code of Criminal Procedure, is amended by adding Section 5 to read as follows:

Sec. 5. In addition to the information described by Section 1 of this article, the judgment should reflect affirmative findings entered pursuant to Article 42.013 of this code.

SECTION \_\_.\_\_. This article takes effect September 1, 1993.

#### ARTICLE 10

SECTION \_\_.01. Article 24.03, Code of Criminal Procedure, is amended to read as follows:

Art. 24.03. SUBPOENA AND APPLICATION THEREFOR. (a) Before the clerk or his deputy shall be required or permitted to issue a subpoena in any felony case pending in any district or criminal district court of this State of which he is clerk or deputy, the defendant or his attorney or the State's attorney shall make written, sworn application to such clerk for each witness desired. Such application shall state the name of each witness desired, the location and vocation, if known, and that the testimony of said witness is material to the State or to the defense. The application must be filed with the clerk and placed with the papers in the cause and made available to both the State and the defendant. Except as provided by Subsection (b) of this article, as [As] far as is practical such clerk shall include in one subpoena the names of all witnesses for the State and for defendant, and such process shall show that the witnesses are summoned for the State or for the defendant. When a witness has been served with a subpoena, attached or placed under bail at the instance of either party in a particular case, such execution of process shall inure to the benefit of the opposite party in such case in the event such opposite party desires to use such witness on the trial of the case, provided that when a witness has once been served with a subpoena, no further subpoena shall be issued for said witness.

(b) If the defendant is a member of a combination as defined by Section 71.01, Penal Code, the clerk shall issue for each witness a subpoena that does not include a list of the names of all other witnesses for the State or the defendant.

SECTION \_\_.02. This article takes effect September 1, 1993.

#### ARTICLE 11.

SECTION \_\_.01. Chapter 40, Code of Criminal Procedure, is amended by adding Article 40.001 to read as follows:

Art. 40.001. NEW TRIAL ON MATERIAL EVIDENCE. A new trial shall be granted an accused where material evidence favorable to the accused has been discovered since trial.

SECTION \_\_.02. Under the terms of Section 22.108(b), Government Code, Rule 30(b)(6), Texas Rules of Appellate Procedure, is disapproved.

SECTION \_\_.03. The rulemaking authority granted to the court of criminal appeals under Section 22.108, Government Code, is withdrawn with respect to rules of appellate procedure relating to granting a new trial on the grounds of evidence other than material evidence discovered after the trial of an offense.

SECTION \_\_.04. (a) The change in law made by this article applies only to a new trial for an offense committed on or after the effective date of this article. For purposes of this section, an offense is committed before the effective date of this article if any element of the offense occurs before the effective date.

(b) A new trial for an offense committed before the effective date of this article is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

SECTION \_\_.05. This article takes effect September 1, 1993.

#### ARTICLE 12

SECTION \_\_\_\_01. Section 8, Article 42.18, Code of Criminal Procedure, is amended by adding Subsection (o) to read as follows:

(o) In addition to other conditions imposed by a parole panel under this article, the parole panel shall require as a condition of parole or release to mandatory supervision that a prisoner for whom the court has made an affirmative finding under Article 42.014 of this code perform not less than 300 hours of community service at a project designated by the parole panel that primarily serves the person or group who was the target of the defendant's bias or prejudice.

SECTION \_\_\_\_\_.02. This article takes effect September 1, 1993.

#### ARTICLE 13

SECTION \_\_\_\_\_. Notwithstanding any provision of this Act establishing an effective date for an article of this Act, this Act takes effect only if S.B. 532, Acts of the 73rd Legislature, Regular Session, 1993, takes effect if S.B. 532 does not take effect, this Act has no effect.

SECTION \_\_\_\_\_. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

#### Amendment No. 1

Amend C.S.S.B. 1067 as follows:

(1) In Article 1 of the bill, in Section 1.01, strike Section 12.35(b)(2), Penal Code (page 43, lines 10 and 11, House Committee Report), and substitute the following:

"(2) 24 months or less than 6 months, if the defendant is convicted of an offense punishable as a state jail felony under Section 481.112, Health and Safety Code, or if the defendant has previously been convicted of two or more felonies."

(2) In Article 4 of the bill, in Section 4.01, in proposed Section 15(d), Article 42.12, Code of Criminal Procedure (page 382, line 18, House Committee Report), between "defendant" and "previously", insert "is convicted of an offense punishable as a state jail felony under Section 481.112, Health and Safety Code, or the defendant".

#### Amendment No. 2

Amend C.S.S.B. 1067 as follows:

(1) In Article 1 of the bill, in Section 1.01, strike Section 12.35(d)(2), Penal Code (page 43, lines 24-27, and page 44, lines 1-5, House Committee Report), and substitute the following:

(2) the individual has previously been finally convicted of any felony:

(A) listed in Section 3g(a)(1), Article 42.12, Code of Criminal Procedure; or

(B) for which the judgment contains an affirmative finding under Section 3g(a)(2), Article 42.12, Code of Criminal Procedure.

(2) In Article 1 of the bill, in Section 1.01, strike Subchapter F, Chapter 12, Penal Code (page 52, line 5, through page 54, line 24, House Committee Report).

(3) In Article 4 of the bill, in Section 4.01, strike Section 3, Article 42.12, Code of Criminal Procedure (page 341, line 11, through page 342, line 16, House Committee Report), and substitute a new Section 3 to read as follows:

Sec. 3. JUDGE [COURT] ORDERED COMMUNITY SUPERVISION [PROBATION]. (a) A judge, in the best interest of justice, the public, and the defendant, after conviction or a plea of guilty or nolo contendere, may suspend the imposition of the sentence and place the defendant on community supervision or impose a fine applicable to the offense and place the defendant on community supervision.

(b) In a felony case the minimum period of community supervision is the same as the minimum term of imprisonment applicable to the offense and the maximum period of community supervision is 10 years.

(c) The maximum period of community supervision in a misdemeanor case is two years.

(d) A judge may increase the maximum period of community supervision in the manner provided by Section 22(c) of this article.

(e) A defendant is not eligible for community supervision under this section if the defendant:

(1) is sentenced to a term of imprisonment that exceeds 10 years;

or

(2) is sentenced to serve a term of confinement under Section 12.35, Penal Code.

(4) In Article 4 of the bill, in Section 4.01, strike bracketed Section 3g, Article 42.12, Code of Criminal Procedure (page 343, line 13, through page 344, line 14, House Committee Report), and substitute the following:

Sec. 3g. LIMITATION ON JUDGE [COURT] ORDERED COMMUNITY SUPERVISION [PROBATION]. (a) The provisions of Section 3 of this article do not apply:

(1) to a defendant adjudged guilty of an offense defined by the following sections of the Penal Code:

(A) Section 19.02 (Murder);

(B) Section 19.03 (Capital murder);

(C) Section 21.11(a)(1) (Indecency with a child);

(D) [(B)] Section 20.04 (Aggravated kidnapping);

(E) [(C)] Section 22.021 (Aggravated sexual assault);

(F) [(D)] Section 29.03 (Aggravated robbery); or

(2) to a defendant when it is shown that a deadly weapon as defined in Section 1.07[(a)(1)], Penal Code, was used or exhibited during the commission of a felony offense or during immediate flight therefrom, and that the defendant used or exhibited the deadly weapon or was a party to the offense and knew that a deadly weapon would be used or exhibited. On an affirmative finding under this subdivision, the trial court shall enter the finding in the judgment of the court. On an affirmative finding that the deadly weapon was a firearm, the court shall enter that finding in its judgment.

(b) If there is an affirmative finding under Subsection (a)(2) in the trial of a felony of the second degree or higher that the deadly weapon used or exhibited was a firearm and the defendant is granted community



~~supervision~~ ~~[probation]~~, the court may order the defendant confined in the institutional division of the Texas Department of Criminal Justice for not less than 60 and not more than 120 days. At any time after the defendant has served 60 days in the custody of the institutional division, the sentencing judge, on his own motion or on motion of the defendant, may order the defendant released to community supervision ~~[probation]~~. The institutional division shall release the defendant to community supervision ~~[probation]~~ after he has served 120 days.

(5) In Article 4 of the bill, in Section 4.01, strike Section 4, Article 42.12, Code of Criminal Procedure (page 344, line 15, through page 345, line 15, House Committee Report), and substitute the following:

Sec. 4. JURY RECOMMENDED COMMUNITY SUPERVISION ~~[PROBATION]~~. (a) A jury that imposes confinement as punishment for an offense may recommend to the judge that the judge suspend the imposition of the sentence and place the defendant on community supervision. A judge shall suspend the imposition of the sentence and place the defendant on community supervision if the jury makes that recommendation in the verdict.

(b) If the jury recommends to the judge that the judge place the defendant on community supervision, the judge shall place the defendant on community supervision for any period permitted under Section 3(b) or 3(c) of this article, as appropriate.

(c) A judge may increase the maximum period of community supervision in the manner provided by Section 22(c) of this article.

(d) A defendant is not eligible for community supervision under this section if the defendant:

(1) is sentenced to a term of imprisonment that exceeds 10 years;

(2) is sentenced to serve a term of confinement under Section 12.35, Penal Code;

(3) is convicted of an offense under Section 481.122, Health and Safety Code, committed on or after the defendant's 21st birthday; or

(4) does not file a sworn motion under Subsection (e) of this section or for whom the jury does not enter in the verdict a finding that the information contained in the motion is true.

(e) A defendant is eligible for community supervision under this section only if before the trial begins the defendant files a written sworn motion with the judge that the defendant has not previously been convicted of a felony in this or any other state, and the jury enters in the verdict a finding that the information in the defendant's motion is true.

(6) In Article 4 of the bill, in Section 4.01, strike Section 5, Article 42.12, Code of Criminal Procedure (page 347, line 14, through page 350, line 7, House Committee Report), and substitute the following:

Sec. 5. DEFERRED ADJUDICATION; Community Supervision. (a) Except as provided by Subsection (d) of this section, when in the judge's ~~[its]~~ opinion the best interest of society and the defendant will be served, the judge ~~[court]~~ may, after receiving a plea of guilty or plea of nolo contendere, hearing the evidence, and finding that it substantiates the defendant's guilt, defer further proceedings without entering an adjudication of guilt, and place the defendant on community supervision

[probation]. The judge [court] shall inform the defendant orally or in writing of the possible consequences under Subsection (b) of this section of a violation of community supervision [probation]. If the information is provided orally, the judge [court] must record and maintain the judge's [court's] statement to the defendant. In a felony case, the period of community supervision [probation] may not exceed 10 years. In a misdemeanor case, the period of community supervision [probation] may not exceed two years. A judge may increase the maximum period of community supervision in the manner provided by Section 22(c) of this article. The judge [court] may impose a fine applicable to the offense and require any reasonable [terms and] conditions of community supervision that a judge could impose on a defendant placed on community supervision for a conviction that was probated and suspended, including confinement [probation]. However, upon written motion of the defendant requesting final adjudication filed within 30 days after entering such plea and the deferment of adjudication, the judge [court] shall proceed to final adjudication as in all other cases.

(b) On violation of a condition of community supervision [probation] imposed under Subsection (a) of this section, the defendant may be arrested and detained as provided in Section 21 [24] of this article [Article]. The defendant is entitled to a hearing limited to the determination by the court of whether it proceeds with an adjudication of guilt on the original charge. No appeal may be taken from this determination. After an adjudication of guilt, all proceedings, including assessment of punishment, pronouncement of sentence, granting of community supervision [probation], and defendant's appeal continue as if the adjudication of guilt had not been deferred.

(c) On expiration of a community supervision [probationary] period imposed under Subsection (a) of this section, if the judge [court] has not proceeded to adjudication of guilt, the judge [court] shall dismiss the proceedings against the defendant and discharge him. The judge [court] may dismiss the proceedings and discharge the defendant prior to the expiration of the term of community supervision [probation] if in the judge's [its] opinion the best interest of society and the defendant will be served. A dismissal and discharge under this section may not be deemed a conviction for the purposes of disqualifications or disabilities imposed by law for conviction of an offense, except that:

(1) upon conviction of a subsequent offense, the fact that the defendant had previously received community supervision with a deferred adjudication of guilt [probation] shall be admissible before the court or jury to be considered on the issue of penalty; and

(2) if the defendant is an applicant for a license or is a licensee under Chapter 42, Human Resources Code, the Texas Department of Human Services may consider the fact that the defendant previously has received community supervision with a deferred adjudication of guilt [probation] under this section in issuing, renewing, denying, or revoking a license under that chapter.

(d) In all other cases the judge may grant deferred adjudication unless the defendant is charged with an offense under:

(1) Section 49.04, 49.05, 49.06, 49.07, or 49.08, Penal Code;  
(2) Section 481.122 or 481.126, Health and Safety Code; or  
(3) Section 34, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), Section 32(c), Texas Motor Vehicle Safety-Responsibility Act (Article 6701b, Vernon's Texas Civil Statutes), or Section 10, Texas Commercial Driver's License Act (Article 6687b-2, Revised Statutes).

(7) In Article 4 of the bill, in Section 4.01, strike Section 6(a), Article 42.12, Code of Criminal Procedure (page 350, line 18, through page 351, line 13, House Committee Report), and substitute the following:

(a) For the purposes of this section, the jurisdiction of a court in which a sentence requiring imprisonment ~~[confinement]~~ in the institutional division of the Texas Department of Criminal Justice ~~[Corrections]~~ is imposed by the judge of the court shall continue for 180 days from the date the execution of the sentence actually begins. Before the expiration of 180 days from the date the execution of the sentence actually begins, the judge of the court that imposed such sentence may on his own motion, on the motion of the attorney representing the state, or on the written motion of the defendant, suspend further execution of the sentence and place the defendant on community supervision ~~[probation]~~ under the terms and conditions of this article, if in the opinion of the judge the defendant would not benefit from further imprisonment ~~[incarceration]~~ and:

(1) the defendant is otherwise eligible for community supervision ~~[probation]~~ under this article; and

(2) the defendant had never before been incarcerated in a penitentiary serving a sentence for a felony~~[-and~~

~~[(3) the offense for which the defendant was convicted was other than those defined by Section 19.02, 20.04, 22.021, 22.03, 22.04(a)(1), (2), or (3), 29.03, 36.02, 38.07, 71.02 or a felony of the second degree under Section 38.10, Penal Code].~~

(8) In Article 4 of the bill, in Section 4.01, strike Section 9(a), Article 42.12, Code of Criminal Procedure (page 355, line 21, through page 356, line 9, House Committee Report), and substitute the following:

(a) Except as provided by Subsection (g) of this section, before ~~[Before]~~ the imposition of sentence by a judge ~~[the court]~~ in a felony case, and except as provided by Subsection (b) of this section, before the imposition of sentence by a judge ~~[the court]~~ in a misdemeanor case the judge ~~[court]~~ shall direct a supervision ~~[probation]~~ officer to report to the judge ~~[court]~~ in writing on the circumstances of the offense with which the defendant is charged, the amount of restitution necessary to adequately compensate a victim of the offense, the criminal and social history of the defendant, and any other information relating to the defendant or the offense requested by the judge ~~[court]~~. It is not necessary that the report contain a sentencing recommendation, but the report must contain a proposed client supervision plan describing programs and sanctions that the community supervision and corrections department would provide the defendant if the judge suspended the imposition of the sentence or granted deferred adjudication ~~[defendant were granted probation]~~.

(9) In Article 4 of the bill, in Section 4.01, strike Section 9(g), Article 42.12, Code of Criminal Procedure (page 357, lines 7 through 9, House Committee Report), and substitute the following:

(g) Unless requested by the defendant, a judge is not required to direct an officer to prepare a presentence report in a felony case under this section if:

(1) punishment is to be assessed by a jury;

(2) the defendant is convicted of or enters a plea of guilty or nolo contendere to capital murder;

(3) the only available punishment is imprisonment; or

(4) the judge is informed that a plea bargain agreement exists, under which the defendant agrees to a punishment of imprisonment, and the judge intends to follow the agreement [The probation officer making a report under this section shall send a copy of the report to an institution to which the defendant is committed].

(10) In Article 4 of the bill, in Section 4.01, add a new Section 9(k), Article 42.12, Code of Criminal Procedure (page 358, between lines 23 and 24, House Committee Report), to read as follows:

(k) If a presentence report in a felony case is not required under this section, the judge shall direct the officer to prepare a postsentence report containing the same information that would have been required for the presentence report, other than a proposed client supervision plan and any information that is reflected in the judgment. The officer shall send the postsentence report to the clerk of the court not later than the 30th day after the date on which sentence is pronounced or deferred adjudication is granted, and the clerk shall file the postsentence report with the papers in the case.

(11) In Article 4 of the bill, in Section 4.01, in Section 12(a), Article 42.12, Code of Criminal Procedure (page 370, line 1, House Committee Report), strike "90 [30]" and substitute "30".

(12) In Article 4 of the bill, in Section 4.01, strike Section 22(a), Article 42.12, Code of Criminal Procedure (page 406, line 22, through page 408, line 20, House Committee Report), and substitute the following:

(a) If after a hearing under Section 21 [24] of this article a judge [court] continues or modifies community supervision [a felony probation] after determining that the defendant [probationer] violated a condition of community supervision [probation], the judge [court] may impose any other conditions the judge determines are appropriate, including [one or more of the following sanctions on the probationer]:

(1) a requirement that the defendant [probationer] perform [work probation or] community service for a number of hours specified by the court under Section 16 [or 17] of this article, or an increase in the number of hours that the defendant [probationer] has previously been required to perform under those sections in an amount not to exceed double the number of hours permitted by Section 16;

(2) an increase in the period of community supervision [probation], in the manner described by Subsection (b) of this section;

(3) an increase in the defendant's [probationer's] fine, in the manner described by Subsection (d) [(e)] of this section; or

~~(4) the placement of the defendant in a substance abuse felony punishment program operated under Section 493.009, Government Code, in the same manner and under the same conditions as if the judge had originally placed the defendant in that program, if the defendant would have been eligible for placement in the program as an initial condition of community supervision. [the placement of the probationer in an intensive or maximum probation program, in the same manner and under the same conditions as if the court had originally placed the probationer in that program;~~

~~[(5) the placement of the probationer in an electronic monitoring program under Section 21 of this article;~~

~~[(6) confinement in the county jail for a period not to exceed 30 days, to be served consecutively, or at the discretion of the court, in the manner provided by Article 42.033 or 42.034 of this code;~~

~~[(7) placement in a community corrections facility, in the same manner and under the same conditions as if the court had originally placed the probationer in that program, if the probationer would have been eligible for sentencing to the center on conviction of the offense for which the probationer received probation;~~

~~[(8) confinement in the county jail for a period not to exceed 90 days, to be served consecutively; or~~

~~[(9) confinement in a facility operated by the institutional division of the Texas Department of Criminal Justice for a period of either 60 or 90 days, as specified by the court, if the court enters in the order modifying probation a statement that the court has previously imposed three or more sanctions on the defendant under this section.]~~

(13) In Article 4 of the bill, in Section 4.01, in Section 22(b), Article 42.12, Code of Criminal Procedure (page 408, line 21, House Committee Report), strike "(a)(5)" and substitute "(a)(4)".

(14) In Article 4 of the bill, add a new Section 4.04 (page 415, between lines 23 and 24, House Committee Report) to read as follows and renumber existing Section 4.04 as Section 4.05:

SECTION 4.04. (a) On and after September 1, 1993, a reference in the law to "probation" or "deferred adjudication" means "community supervision," as that term is defined in Section 2, Article 42.12, Code of Criminal Procedure, as amended by Section 4.01 of this article. A defendant who is placed on probation or who receives deferred adjudication before September 1, 1993, is considered on and after September 1, 1993, to have previously been placed on community supervision.

(b) The legislature declares that among its purposes in amending Article 42.12, Code of Criminal Procedure, in Section 4.01 of this article, is the purpose of authorizing a judge to place a defendant for whom the judge defers criminal proceedings without an adjudication of guilt under the same continuum of programs and sanctions that the judge could place a defendant under if the judge probated the defendant's sentence and suspended the imposition of the sentence. It is not the intent of the legislature to eliminate or alter substantive or procedural distinctions between probated and suspended sentences and deferred adjudications, other than those distinctions related to placement of defendants under a continuum of sanctions and programs.

(15) In Article 5 of the bill, in Section 5.03, strike Subdivision 21 of Section 1, Article 42.01, Code of Criminal Procedure (page 423, lines 11-13, House Committee Report), and substitute the following:

"21. Affirmative findings entered pursuant to Subdivision (2) of Subsection (a) of Section 3g of Article 42.12 of this code;"

(16) In Article 5 of the bill, in Section 5.03, in Section 1, Article 42.01, Code of Criminal Procedure, strike "and" at the end of Subdivision 24 (page 423, line 21, House Committee Report), strike the period at the end of Subdivision 25 (page 424, line 3, House Committee Report), and substitute the following:

; and

26. In the event that a presentence investigation is required by Section 9(a), (b), (h), or (i), Article 42.12 of this code, a statement that the presentence investigation was done according to the applicable provision.

(17) In Article 5 of the bill, in Section 5.03, in Article 42.08(a), Code of Criminal Procedure (page 441, line 1, House Committee Report), strike "5 [10]" and substitute "10".

(18) In Article 5 of the bill, in Section 5.03, strike Subsection (d), Article 42.08, Code of Criminal Procedure (page 441, line 22, through page 442, line 1, House Committee Report).

(19) In Article 5 of the bill, in Section 5.03, strike Section 8(a)(10), Article 42.09, Code of Criminal Procedure (page 445, lines 13-16, House Committee Report), and substitute the following:

~~(10) [a copy of the Criminal Justice Data Report prepared under Section 413.018, Government Code, and~~

~~[(11)]~~ a copy of a presentence or postsentence investigation report prepared under Section 9, Article 42.12 of this code.

(20) In Article 5 of the bill, in Section 5.03, in Section 8(c), Article 42.09, Code of Criminal Procedure (page 446, line 2, House Committee Report), between "presentence" and "investigation", insert "or postsentence".

(21) In Article 6 of the bill, strike Section 6.01 of the bill (page 464, lines 2-12, House Committee Report).

(22) In Article 6 of the bill, in Section 6.02, strike Section 8(b)(3), Article 42.18, Code of Criminal Procedure (page 464, line 19, through page 465, line 3, House Committee Report), and substitute the following:

(3) If a prisoner is serving a sentence for the offenses listed in Subdivision (1)(~~A~~) (~~B~~), (C), (~~or~~) (D), (~~E~~), or (F) of Section 3g(a), Article 42.12 of this code, or if the judgment contains an affirmative finding under Subdivision (2) of Subsection (a) of Section 3g of that article, he is not eligible for release on parole until his actual calendar time served, without consideration of good conduct time, equals one-half [~~one-fourth~~] of the maximum sentence or 30 [~~15~~] calendar years, whichever is less, but in no event shall he be eligible for release on parole in less than two calendar years.

(23) In Article 6 of the bill, in Section 6.03, in Section 8(c), Article 42.18, Code of Criminal Procedure (page 465, lines 24 and 25, House Committee Report), strike "[Subdivision (2), Subsection (a), Section 3g,]

Article ~~42.012~~ [42.12]" and substitute "Subdivision (2), Subsection (a), Section 3g, Article 42.12".

(24) Renumber the existing sections of Article 6 as appropriate.

**Amendment No. 3**

Amend C.S.S.B. 1067 in Section 1.01 of Article 1 of the bill as follows:

(1) Strike Section 28.03(b)(2), Penal Code (page 114, lines 15 and 16, House Committee Report), and substitute the following:

"(2) a Class B misdemeanor if the amount of pecuniary loss is \$20 or more but less than \$500 [~~\$200~~];".

(2) Strike Section 28.07(e)(1), Penal Code (page 120, lines 5 and 6, House Committee Report), and substitute the following:

"(1) a Class B misdemeanor if the amount of pecuniary loss is \$20 or more but less than \$500 [~~\$200~~];".

(3) In Subdivisions (1) and (2), Section 32.33(d), Penal Code (page 158, lines 20 and 23, House Committee Report), strike "\$50" and substitute "\$20".

(4) In Subdivisions (1) and (2), Section 32.33(e), Penal Code (page 160, lines 6 and 9, House Committee Report), strike "\$50" and substitute "\$20".

(5) In Subdivisions (1) and (2), Section 32.35(e), Penal Code (page 165, line 26 and page 166, line 1, House Committee Report), strike "\$50" and substitute "\$20".

(6) In Subdivisions (1) and (2), Section 32.441(e), Penal Code (page 174, lines 10 and 12, House Committee Report), strike "\$50" and substitute "\$20".

(7) In Subdivisions (1) and (2), Section 32.45(c), Penal Code (page 175, lines 18 and 20, House Committee Report), strike "\$50" and substitute "\$20".

(8) In Subdivisions (1) and (2), Section 32.46(b), Penal Code (page 176, lines 14 and 16, House Committee Report), strike "\$50" and substitute "\$20".

**Amendment No. 4**

Amend C.S.S.B. 1067 in Article 1 of the bill, in Section 1.01, by striking proposed Section 30.02, Penal Code, (page 124, line 23 through page 125, line 23, House Committee Report) and substituting a new Section 30.02 to read as follows:

Sec. 30.02. BURGLARY. (a) A person commits an offense if, without the effective consent of the owner, he:

(1) enters a habitation, or a building (or any portion of a building) not then open to the public, with intent to commit a felony or theft; or

(2) remains concealed, with intent to commit a felony or theft, in a building or habitation; or

(3) enters a building or habitation and commits or attempts to commit a felony or theft.

(b) For purposes of this section, "enter" means to intrude:

- (1) any part of the body; or
- (2) any physical object connected with the body.
- (c) Except as provided in Subsection (d) ~~[of this section]~~, an offense under this section is a:
  - ~~(1) state jail felony if committed in a building other than a habitation; or~~
  - ~~(2) felony of the second degree if committed in a habitation.~~
  - (d) An offense under this section is a felony of the first degree if:
    - (1) the premises are a habitation; ~~and [or]~~
    - (2) any party to the offense ~~entered the habitation with intent to commit a felony other than felony theft [is armed with explosives or a deadly weapon; or~~
    - ~~[(3) any party to the offense injures or attempts to injure anyone in effecting entry or while in the building or in immediate flight from the building].~~

#### **Amendment No. 5**

Amend C.S.S.B. 1067, in Article 1 of the bill, in Section 1.01, in amended Section 30.05(a), Penal Code (pages 126 and 127, House Committee Report), by striking Subdivision (2) and substituting the following:

- (2) "Notice" means:
  - (A) oral or written communication by the owner or someone with apparent authority to act for the owner;
  - (B) fencing or other enclosure obviously designed to exclude intruders or to contain livestock;
  - (C) a sign or signs posted on the property or at the entrance to the building, reasonably likely to come to the attention of intruders, indicating that entry is forbidden; or
  - (D) the visible presence on the property of a crop grown for human consumption that is under cultivation, in the process of being harvested, or marketable if harvested at the time of entry.

#### **Amendment No. 6**

Amend C.S.S.B. 1067 in Article 1 of the bill, in Section 1.01, in amended Section 38.11(b), Penal Code (page 219, line 2), by striking "Class A misdemeanor" and substituting "state jail felony".

#### **Floor Amendment No. 7**

Amend C.S.S.B. 1067 as follows:

- (1) On page 445, line 5, between "(7)" and "information":, insert "any available".
- (2) On page 445, line 6, after the word "defendant", strike the semicolon and insert ", including the defendant's state identification number:".
- (3) On page 447, between lines 26 and 27, insert the following new subsection to read as follows:
 

"(i) A county may deliver the documents required under Subsections (a) and (c) of this section to the institutional division of the Texas



Department of Criminal Justice by electronic means. For purposes of this subsection, "electronic means" means the transmission of data between word processors, data processors, or similar automated information equipment over dedicated cables, commercial lines, or other similar methods of transmission."

**Amendment No. 8**

Amend C.S.S.B. 1067 in Article 5 as follows:

(1) Strike Section 5.05 of the bill (pages 459-461, House Committee Report), and substitute a new Section 5.05 to read as follows:

SECTION 5.05. Section 3(a), Article 37.07, Code of Criminal Procedure, is amended to read as follows:

(a) Regardless of the plea and whether the punishment be assessed by the judge or the jury, evidence may~~[-as permitted by the Rules of Evidence;]~~ be offered by the state and the defendant as to any matter the court deems relevant to sentencing, including but not limited to the prior criminal record of the defendant, his general reputation, ~~[and] his character, an opinion regarding his character, the circumstances of the offense for which he is being tried, and, notwithstanding Rules 404 and 405, Texas Rules of Criminal Evidence, any other evidence of an extraneous crime or bad act that is shown beyond a reasonable doubt by evidence to have been committed by the defendant or for which he could be held criminally responsible, regardless of whether he has previously been charged with or finally convicted of the crime or act. [The term prior criminal record means a final conviction in a court of record, or a probated or suspended sentence that has occurred prior to trial, or any final conviction material to the offense charged;]~~ A court may consider as a factor in mitigating punishment the conduct of a defendant while participating in a program under Chapter 17 ~~[Article 17.40 or 17.42(a)]~~ of this code as a condition of release on bail. Additionally, notwithstanding Rule 609(d), Texas Rules of Criminal Evidence, evidence may be offered by the state and the defendant of an adjudication of delinquency based on a violation by the defendant of a penal law of the grade of felony unless:

(1) the adjudication is based on conduct committed more than five years before the commission of the offense for which the person is being tried; and

(2) in the five years preceding the date of the commission of the offense for which the person is being tried, the person did not engage in conduct for which the person has been adjudicated as a delinquent child or a child in need of supervision and did not commit an offense for which the person has been convicted.

(2) In Article 5 of the bill, add a new Section 5.06 (page 461, between lines 1 and 2, House Committee Report) to read as follows, and renumber the existing sections of Article 5 accordingly:

SECTION 5.06. Section 3, Article 37.07, Code of Criminal Procedure, is amended by adding Subsection (g) to read as follows:

(g) The attorney representing the state may not introduce evidence under this section unless the attorney gives reasonable notice of an intent to introduce the evidence not later than the 10th day before the date the

trial begins. If the attorney representing the state intends to introduce an extraneous crime or bad act that has not resulted in a final conviction in a court of record or a probated or suspended sentence, notice of that intent is reasonable only if the notice includes the date on which and the county in which the alleged crime or bad act occurred and the name of the alleged victim of the crime or bad act. The requirement under this subsection that the attorney representing the state give notice applies only if the defendant makes a timely request to the attorney representing the state for the notice.

**Amendment No. 9**

Amend C.S.S.B. 1067 in Article 6 of the bill (beginning on page 464, House Committee Report) by adding an appropriately numbered section to read as follows and by renumbering the existing sections of Article 6 accordingly:

SECTION 6. Section 7, Article 42.18, Code of Criminal Procedure, is amended by amending Subsection (e) and adding Subsection (g) to read as follows:

(e) Except as provided by Subsection (g) of this section, in [in] matters of parole, release to mandatory supervision, and revocation of parole or mandatory supervision, the board members shall act in panels comprised of three persons in each panel. The composition of the respective panels shall be designated by the chairman of the board. A majority of each panel shall constitute a quorum for the transaction of its business, and its decisions shall be by majority vote.

(g) The board may grant parole to a person convicted of a capital felony only on a two-thirds vote of the entire membership of the board.

**Amendment No. 10**

Amend C.S.S.B. 1067 in Article 7, in Section 7.02, in proposed Article 55.01(1), Code of Criminal Procedure (page 470, line 25, House Committee Report), between “acquitted” and the semicolon by inserting “or is convicted and subsequently pardoned”.

**Amendment No. 11**

Amend C.S.S.B. 1067 by adding an appropriately numbered article to read as follows and by renumbering the existing articles appropriately:

ARTICLE \_\_\_\_

SECTION \_\_.01. Article 38.07, Code of Criminal Procedure, is amended to read as follows:

Art. 38.07. TESTIMONY IN CORROBORATION OF VICTIM OF SEXUAL OFFENSE. A conviction under Chapter 21, Section 22.011, or Section 22.021, Penal Code, is supportable on the uncorroborated testimony of the victim of the sexual offense if the victim informed any person, other than the defendant, of the alleged offense within one year ~~[six months]~~ after the date on which the offense is alleged to have occurred. The requirement that the victim inform another person of an alleged offense does not apply if the victim was younger than 18 ~~[14]~~ years of age at the time of the alleged offense. ~~[The court shall instruct the jury that the time which lapsed between the alleged offense and the time it was reported shall~~

~~be considered by the jury only for the purpose of assessing the weight to be given to the testimony of the victim.]~~

SECTION \_\_.02. This article takes effect September 1, 1993.

**Floor Amendment No. 12**

Amend C.S.S.B. 1067 as follows:

(1) On page 390, strike Subsection (b), lines 16-20, and letter the following subsections accordingly.

(2) On page 391, line 3, change "80" to "120".

(3) On page 391, line 15, add a new Subsection (c) and letter the following subsections accordingly:

(c) If the judge modifies the defendant's terms of community supervision to include confinement in a state jail felony facility, the judge shall order the defendant to continue to work towards fulfillment of his work requirement during his period of confinement.

**Amendment No. 13**

Amend C.S.S.B. 1067 as follows:

(1) In Article 1 of the bill, add a new Section 1.18 (page 309, between lines 14 and 15, House Committee Report) to read as follows and renumber existing Section 1.18 as Section 1.19:

SECTION 1.18. Under the terms of Section 22.109(b), Government Code, Rule 412(e), Texas Rules of Criminal Evidence, is disapproved.

(2) In Article 3 of the bill, in Section 3.06, between the introductory language of Section 3.06 and the language of added Article 17.032, Code of Criminal Procedure (page 338, between lines 19 and 20), insert the following:

Art. 17.032. RELEASE ON PERSONAL BOND OF CERTAIN MENTALLY ILL DEFENDANTS. (a) In this article, "violent offense" means an offense under the following sections of the Penal Code:

(1) Section 19.02 (murder);

(2) Section 19.03 (capital murder);

(3) Section 20.03 (kidnapping);

(4) Section 20.04 (aggravated kidnapping);

(5) Section 21.11 (indecent with a child);

(6) Section 22.01(a)(1) (assault);

(7) Section 22.011 (sexual assault);

(8) Section 22.02 (aggravated assault);

(9) Section 22.021 (aggravated sexual assault);

(10) Section 22.04 (injury to a child, elderly individual, or invalid); or

(11) Section 29.03 (aggravated robbery).

(b) A magistrate shall release a defendant on personal bond if the:

(1) defendant is not charged with and has not been previously convicted of a violent offense;

(2) defendant is examined by a mental health expert under Section 3(b), Article 46.02 of this code;

(3) examining expert, in a report submitted to the magistrate under Section 3(d), Article 46.02, of this code;

(A) concludes that the defendant is mentally ill and is nonetheless competent to stand trial; and

(B) recommends mental health treatment for the defendant;  
and

(3) In Article 4 of the bill, in Section 4.01, strike Section 5(a), Article 42.12, Code of Criminal Procedure (page 347, line 14 through page 348, line 12, House Committee Report), and substitute the following:

(a) Except as provided by Subsection (d) of this section, when in its opinion the best interest of society and the defendant will be served, the judge [court] may, after receiving a plea of guilty or plea of nolo contendere, hearing the evidence, and finding that it substantiates the defendant's guilt, defer further proceedings without entering an adjudication of guilt, and place the defendant on community supervision [probation]. The judge [court] shall inform the defendant orally or in writing of the possible consequences under Subsection (b) of this section of a violation of community supervision [probation]. If the information is provided orally, the judge [court] must record and maintain the court's statement to the defendant. In a felony case, the period of community supervision [probation] may not exceed five [10] years. In a misdemeanor case, the period of community supervision [probation] may not exceed two years. A judge may increase the maximum period of community supervision in the manner provided by Section 22(b) of this article. The judge [court] may impose a fine applicable to the offense and require any reasonable terms and conditions of community supervision, including mental health treatment under Section 11(d) of this article that the judge could impose on a defendant to whom the judge grants community supervision and for whom the court suspends the imposition of a sentence of imprisonment or confinement [probation]. However, upon written motion of the defendant requesting final adjudication filed within 30 days after entering such plea and the deferment of adjudication, the judge [court] shall proceed to final adjudication as in all other cases.

(4) In Article 4 of the bill, strike Section 4.02(c) of the bill (page 415, lines 5-17, House Committee Report) and substitute the following:

SECTION 4.03. Section 534.053(c), Health and Safety Code, is amended to read as follows:

(c) To the extent that resources are available, the department shall:

(1) ensure that the services listed in this section are available for children, including adolescents, as well as adults, in each service area; [and]

(2) emphasize early intervention services for children, including adolescents, who meet the department's definition of being at high risk of developing severe emotional disturbances or severe mental illnesses; and

(3) ensure that services listed in this section are available for defendants required to submit to mental health treatment under Article 17.032 or Section 5(a) or 11(d), Article 42.12, Code of Criminal Procedure.

(5) In Article 4 of the bill (page 415, House Committee Report), renumber Sections 4.03 and 4.04 of the bill as Sections 4.04 and 4.05.

(6) In Article 5 of the bill, in the introductory language of Section 5.03 of the bill (page 421, line 10, House Committee Report), strike "42.023" and substitute "42.014, 42.023,".

(7) In Article 5 of the bill, in Section 5.03, add a new Section 6 to Article 42.01, Code of Criminal Procedure (page 424, between lines 15 and 16), to read as follows:

Sec. 6. In addition to the information described by Section 1 of this article, the judgment should reflect affirmative findings entered pursuant to Article 42.14 of this code.

(8) In Article 5 of the bill, in Section 5.03, strike the two lines immediately preceding Article 42.02, Code of Criminal Procedure (page 425, lines 7 and 8, House Committee Report).

#### **Amendment No. 14**

Amend C.S.S.B. 1067 as follows:

(1) In Section 1.01 of the bill, strike proposed Subsection (a), Section 12.47, Penal Code (page 49, lines 11-14, House Committee Report), and substitute the following:

(a) If the court makes an affirmative finding under Article 42.014, Code of Criminal Procedure, in the trial of a Class B or Class C misdemeanor, the maximum fine that the court may impose is:

(1) \$2,000 for a Class C misdemeanor; and

(2) \$4,000 for a Class B misdemeanor.

(2) In Section 5.03 of the bill, add a new Section 5 to Article 42.01 (page 424, House Committee Report) to read as follows:

Sec. 5. In addition to the information described by Section 1 of this article, the judgment should reflect affirmative findings entered pursuant to Article 42.014 of this code.

(3) In Section 5.03 of the bill in proposed Article 42.014 (page 425, line 2, House Committee Report) strike "In the trial" and substitute "In the punishment phase of the trial".

#### **Amendment No. 15**

Amend C.S.S.B. 1067 (p. 30) in Article 1, Section 1.01, by striking Section 9.31(b), Penal Code, and substituting the following:

(b) The use of force against another is not justified:

(1) in response to verbal provocation alone;

(2) to resist an arrest or search that the actor knows is being made by a peace officer, or by a person acting in a peace officer's presence and at his direction, even though the arrest or search is unlawful, unless the resistance is justified under Subsection (c) of this section;

(3) if the actor consented to the exact force used or attempted by the other; ~~[or]~~

(4) if the actor provoked the other's use or attempted use of unlawful force, unless:

(A) the actor abandons the encounter, or clearly communicates to the other his intent to do so reasonably believing he cannot safely abandon the encounter; and

(B) the other nevertheless continues or attempts to use unlawful force against an actor; or

(5) if the actor sought an explanation from or discussion with the other person concerning the actor's differences with the other person while the actor was carrying a weapon in violation of Section 46.02 of this code.

#### Amendment No. 18

Amend C.S.S.B. 1067 in Article 1, Section 1.01, of the bill by adding Section 12.48 to Subchapter D, Chapter 12, Penal Code (page 49, between lines 20 and 21, House Committee Report), to read as follows:

Sec. 12.48. PENALTY IF CRIME COMMITTED ON PUBLIC TRANSPORTATION SYSTEM. (a) The punishment prescribed for an offense listed in Subsection (b) is increased to the punishment prescribed for the next highest category of offense if it is shown on the trial of the offense that the offense occurred on the premises of a designated recipient of mass transit funds under Chapter 679, Acts of the 64th Legislature, 1975 (Article 6663c, Vernon's Texas Civil Statutes), or an authority created under:

(1) Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes);

(2) Chapter 683, Acts of the 66th Legislature, Regular Session, 1979 (Article 1118y, Vernon's Texas Civil Statutes); or

(3) Article 1118z, Revised Statutes.

(b) This section applies to an offense under:

(1) Chapter 21, 22, or 29; or

(2) Section 46.02 or 49.02.

(c) This section does not apply to an offense for which the punishment otherwise prescribed is the punishment for a first-degree felony or a capital felony.

(d) In this section, "premises" means a bus, vehicle, rail car, rolling stock, station, platform, bus stop, bus shelter, sales outlet, parking lot, garage, or terminal that is used by the public for mass transit purposes.

#### Floor Amendment No. 21

Amend C.S.S.B. 1067 in the following manner:

1) In Section 1.01 of the bill amend Section 19.03, Penal Code, on page 73, line 12, after the word "fireman" add the words "or the person murders a peace officer who is wearing a distinctive uniform that identifies him as a peace officer"

#### Amendment No. 23

Amend C.S.S.B. 1067 as follows:

(1) In Article 1, Section 1.01, Chapter 31, Penal Code, amended Section 31.03 (on page 136, lines 13-27, House Committee Report), strike Subsection (e)(4) and substitute the following:

(4) a state jail felony [of the third degree] if:

(A) the value of the property stolen is \$1,500 [\$750] or more but less than \$20,000 [or the property is one or more head of cattle, horses, sheep, swine, or goats or any part thereof under the value of \$20,000];

(B) regardless of value, the property is stolen from the person of another or from a human corpse or grave;

(C) the property stolen is a ~~[one]~~ firearm, as defined by Section 46.01 ~~[of this code, and is valued at more than \$400];~~

(D) ~~[the property stolen is two or more firearms, as defined by Section 46.01 of this code, or~~

~~[(E)]~~ the value of the property stolen is less than \$1,500 ~~[\$750]~~ and the defendant has been previously convicted two or more times of any grade of theft; ~~or~~

(E) the property stolen is one or more head of cattle, horses, sheep, swine, or goats or any part thereof, regardless of value;

#### Amendment No. 24

Amend C.S.S.B. 1067 in Section 1.01 by striking Section 22.021(a)(2)(A)(iii) and (iv), Penal Code (page 92, lines 19-23, House Committee Report), and substituting the following:

“(iii) by acts or words occurring in the presence of the victim threatens to cause the death, serious bodily injury, or kidnapping of any person; ~~or~~

(iv) uses or exhibits a deadly weapon in the course of the same criminal episode; or

(v) acts in concert with another who engages in conduct described by Subdivision (1) directed toward the same victim and occurring during the course of the same criminal episode; or”.

#### Amendment No. 25

Amend C.S.S.B. 1067 as follows:

(1) In Article 1, Section 1.01, amended Section 31.01, Penal Code (on page 131, between lines 7 and 8, House Committee Report), add the following new Subdivision (12):

(12) “Elderly individual” has the meaning assigned by Section 22.04(c) of this code.

(2) In Article 1, Section 1.01, amended Section 31.03, Penal Code (on page 136, lines 13-27, House Committee Report), strike Subsection (e)(4) and substitute the following:

(4) a state jail felony ~~[of the third degree]~~ if:

(A) the value of the property stolen is \$1,500 ~~[\$750]~~ or more but less than \$20,000; ~~or the property is one or more head of cattle, horses, sheep, swine, or goats or any part thereof under the value of \$20,000];~~

(B) regardless of value, the property is stolen from the person of another or from a human corpse or grave;

(C) the property stolen is a ~~[one]~~ firearm, as defined by Section 46.01 ~~[of this code, and is valued at more than \$400];~~

(D) ~~[the property stolen is two or more firearms, as defined by Section 46.01 of this code, or~~

~~[(E)]~~ the value of the property stolen is less than \$1,500 ~~[\$750]~~ and the defendant has been previously convicted two or more times of any grade of theft; ~~or~~

(E) the value of the property stolen is \$500 or more but less than \$1,500 and the property is stolen from an elderly individual;

**Amendment No. 26**

Amend C.S.S.B. 1067 in Article 1 of the bill, in Section 1.01, as follows:

(1) In proposed Section 36.01, Penal Code, strike Subdivision (2), (page 192, lines 7-12, House Committee Report), and substitute a new Subdivision (2) to read as follows:

“(2) [(5)] “Benefit” means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct and substantial interest.”.

(2) In proposed Section 36.02(a)(4), Penal Code, (page 193, line 1, House Committee Report), strike “required to be reported under” and substitute “made and reported in accordance with”.

(3) In proposed Section 36.02(d), Penal Code, (page 193, lines 23 and 24, House Committee Report), strike “required to be reported under” and substitute “made and reported in accordance with”.

(4) In proposed Section 36.10(a)(5), Penal Code, (page 200, line 8, House Committee Report), strike “or”.

(5) In proposed Section 36.10(a)(6), Penal Code, (page 200, line 11, House Committee Report), between “Code” and the period, insert the following:

“; or

(7) an item issued by a governmental entity that allows the use of property or facilities owned, leased, or operated by the governmental entity.”.

**Amendment No. 29**

Amend C.S.S.B. 1067 as follows:

Page 81, after line 9 by adding a new Section 21.12 as follows:

“Sec. 21.12. PROHIBITED SEXUAL PRACTICE (a) a person commits an offense if the person engages in a sexual act involving the sex organs of one person and the anus of another.

(b) an offense under this section is a Class C misdemeanor.”

**Amendment No. 30**

Amend C.S.S.B. 1067 as follows:

Page 87, by striking lines 20 through 21 and inserting the following: “than two years older than the victim and of the opposite sex.”

**Amendment No. 33**

Amend C.S.S.B. 1067, in Article 1, Section 1.01, amended Chapter 22, Penal Code (on page 87, lines 26 and 27, and page 88, lines 1-17, House Committee Report), by striking the bracketed Section 22.012 and substituting the following:

Sec. 22.012. INTENTIONALLY EXPOSING ANOTHER TO AIDS OR HIV. (a) A person commits an offense if the person, knowing that he or



she has AIDS or is a carrier of HIV and with intent to cause serious bodily injury or death, intentionally engages in conduct reasonably likely to result in the transfer of the actor's own blood, bodily fluids containing visible blood, semen, or vaginal secretions into the bloodstream of another, or through the other person's skin or other membrane, except during in utero transmission of blood or bodily fluids, and:

(1) the other person did not consent to the transfer of blood, bodily fluids containing blood, semen, or vaginal secretions; or

(2) the other person consented to the transfer but at the time of giving consent had not been informed by the actor that the actor had AIDS or was a carrier of HIV.

(b) In this section, "AIDS" and "HIV" have the meanings assigned by Section 81.101, Health and Safety Code.

(c) An offense under this section is a felony of the third degree.

#### Floor Amendment No. 34

Amend C.S.S.B. 1067 as follows:

(1) In Article I, Section 1.01 of the bill, Section 22.04, Penal Code (pages 95 - 99 House Committee Report), between "child," and "elderly individual", everywhere the terms appear together in the bill, insert "pregnant woman".

(2) In Article I, Section 1.01 of the bill, Section 22.04, Penal Code (page 99, between lines 5 and 6, House Committee Report), add a new Subsection (l) to read as follows:

(l) It is an exception to the application of Subsection (a) that the conduct consisted of the performance of a legal medical procedure on the pregnant woman.

#### Amendment No. 35

Amend C.S.S.B. 1067 in Article 1, Section 1.01 (pages 107-109, House Committee Report), by striking amended Section 25.06, Penal Code, and substituting the following:

Sec. ~~25.055~~ [25.06]. SOLICITATION OF A CHILD. (a) A person commits an offense if he entices, persuades, or invites a child younger than 14 years to enter a vehicle, building, structure, or enclosed area with intent to engage in or propose engaging in sexual intercourse, deviate sexual intercourse, or sexual contact with the child or with intent to expose his anus or any part of his genitals to the child.

(b) The definitions of "sexual intercourse," "deviate sexual intercourse," and "sexual contact" in Chapter 21 ~~[of this code]~~ apply to this section.

(c) An offense under this section is a Class A misdemeanor unless the actor takes the child out of the county of residence of the parent, guardian, or person standing in the stead of the parent or guardian of the child, in which event the offense is a felony of the third degree.

Sec. ~~25.06~~ [25.07]. HARBORING RUNAWAY CHILD. (a) A person commits an offense if he knowingly harbors a child and he is criminally negligent about whether the child:

(1) is younger than 18 years; and  
(2) has escaped from the custody of a peace officer, a probation officer, the Texas Youth Council, or a detention facility for children, or is voluntarily absent from the child's home without the consent of the child's parent or guardian for a substantial length of time or without the intent to return.

(b) It is a defense to prosecution under this section that the actor was related to the child within the second degree by consanguinity or affinity, as determined under Article 5996h, Revised Statutes.

(c) It is a defense to prosecution under this section that the actor notified:

(1) the person or agency from which the child escaped or a law enforcement agency of the presence of the child within 24 hours after discovering that the child had escaped from custody; or

(2) a law enforcement agency or a person at the child's home of the presence of the child within 24 hours after discovering that the child was voluntarily absent from home without the consent of the child's parent or guardian.

(d) An offense under this section is a Class A misdemeanor.

(e) On the receipt of a report from a peace officer, probation officer, the Texas Youth Council, a foster home, or a detention facility for children that a child has escaped its custody or upon receipt of a report from a parent, guardian, conservator, or legal custodian that a child is missing, a law enforcement agency shall immediately enter a record of the child into the National Crime Information Center.

#### Amendment No. 36

Amend C.S.S.B. 1067 in Section 1.01 of the bill by striking Paragraphs (C) and (D), Subdivision (3), Section 31.01, Penal Code (page 129, lines 16-20, House Committee Report), and substituting the following:

“(C) given by a person who by reason of youth, mental disease or defect, or intoxication is known by the actor to be unable to make reasonable property dispositions; ~~or~~

(D) given solely to detect the commission of an offense;

~~or~~

(E) given by a person who by reason of advanced age is known by the actor to have a diminished capacity to make informed and rational decisions about the reasonable disposition of property.”.

#### Amendment No. 37

Amend C.S.S.B. 1067 in Article 1, Section 1.01, by striking proposed Section 36.03(c), Penal Code (page 194, lines 12-19, House Committee Report) and substituting the following:

(c) ~~[It is an exception to the application of]~~ Subsection (a)(1) of this section does not apply to a ~~[that the]~~ person who:

(1) [influences or attempts to influence the public servant] is a member of the governing body of a governmental entity;

(2) acts[, and that the action that influences or attempts] to influence or attempts to influence another [the] public servant through [is]

an official action, including deliberations by the governing body, taken by the person; and

(3) does not act with the specific intent to obtain or attempt to obtain a benefit for the person [member of the governing body. For the purposes of this subsection, the term "official action" includes deliberations by the governing body of a governmental entity].

**Amendment No. 38**

Amend C.S.S.B. 1067 as follows:

(1) In SECTION 1.01 of Article 1 of the bill, in proposed Chapter 38 of the Penal Code (pages 207-209, House Committee Report), strike Section 38.01 and substitute the following:

Sec. 38.01. DEFINITIONS. In this chapter:

(1) ~~["Complaining witness" means the victim of a crime or a person who signs a criminal complaint.~~

~~[(2)] "Custody" means [detained or] under arrest by a peace officer or under restraint by a public servant pursuant to an order of a court.~~

~~(2) [(3)] "Escape" means unauthorized departure from custody or failure to return to custody following temporary leave for a specific purpose or limited period or leave that is part of an intermittent sentence, but does not include a violation of conditions of community supervision [probation] or parole.~~

~~(3) [(4)] "Economic benefit" means anything reasonably regarded as an economic gain or advantage, including accepting or offering to accept employment for a fee, accepting or offering to accept a fee, entering into a fee contract, or accepting or agreeing to accept money or anything of value.~~

~~(4) [(5)] "Finance" means to provide funds or capital or to furnish with necessary funds ["Funeral establishment" means an establishment licensed under Section 4, Chapter 251, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, Vernon's Texas Civil Statutes)].~~

~~(5) "Fugitive from justice" means a person for whom a valid arrest warrant has been issued.~~

~~(6) "Governmental function" includes any activity that a public servant is lawfully authorized to undertake on behalf of government.~~

~~(7) "Invest funds" means to commit money to earn a financial return ["Hospital" means a general hospital or special hospital as defined by Chapter 241, Health and Safety Code].~~

~~(8) "Member of the family" means anyone related within the third degree of consanguinity or affinity, as determined under Article 5996h, Revised Statutes.~~

~~(9) ["Official proceeding" means:~~

~~[(A) a proceeding before a magistrate, court, or grand jury of this state;~~

~~[(B) a proceeding before the legislature or an inquiry authorized by either house or any joint committee established by a joint or concurrent resolution of the two houses of the legislature or any committee or subcommittee of either house of the legislature;~~

~~[(C) a proceeding in which pursuant to lawful authority a court orders attendance or the production of evidence; or~~

~~[(D) a proceeding that otherwise is made expressly subject to this chapter.~~

~~[(10)]~~ "Qualified nonprofit organization" means a nonprofit organization that meets the following conditions:

(A) the primary purposes of the organization do not include the rendition of legal services or education regarding legal services;

(B) the recommending, furnishing, paying for, or educating persons regarding legal services is incidental and reasonably related to the primary purposes of the organization;

(C) the organization does not derive a financial benefit from the rendition of legal services by a lawyer; and

(D) the person for whom the legal services are rendered, and not the organization, is recognized as the client of a lawyer.

(10) "Public media" means a telephone directory or legal directory, newspaper or other periodical, billboard or other sign, radio or television broadcast, recorded message the public may access by dialing a telephone number, or a written communication not prohibited by Section 38.12(d) of this code.

(11) "Solicit employment" means to communicate in person or by telephone or written communication with a prospective client [claimant] or [defendant or with] a member of the prospective client's [claimant's or defendant's] family concerning legal representation arising out of a particular occurrence or event, or series of occurrences or events, or concerning an existing legal problem of the prospective client, for the purpose of providing legal representation to the prospective client, when neither the person receiving the communication nor anyone acting on that person's behalf has requested the communication. The term does not include a communication initiated [communicating] by a family member of the person receiving a communication, a communication [communicating] by an attorney who has a prior or existing attorney-client relationship with the person receiving the communication, or communication by an attorney for [communicating with] a qualified nonprofit organization with the organization's members for the purpose of educating the organization's members to understand the law, [laymen] to recognize legal problems, to make intelligent selection of legal counsel, or to use available legal services. The term does not include an advertisement by an attorney through public media.

(2) In SECTION 1.01 of Article 1 of the bill, in proposed Chapter 38 of the Penal Code (pages 219-220, House Committee Report), strike Section 38.12 and substitute the following:

Sec. 38.12. BARRATRY. (a) A person commits an offense if, with intent to obtain an economic benefit the person ~~[for himself, he]~~:

(1) knowingly institutes a suit or claim that the person has not been authorized to pursue;

(2) solicits employment, either in person or by telephone, for himself or for another;

(3) pays, gives, or advances or offers to pay, give, or advance to a prospective client money or anything of value to obtain legal representation from the prospective client;

(4) pays or gives or offers to pay or give a person money or anything of value to solicit employment;

(5) pays or gives or offers to pay or give a family member of a prospective client money or anything of value to solicit employment; or

(6) accepts or agrees to accept money or anything of value to solicit employment.

(b) A person commits an offense if the person:

(1) is an attorney, chiropractor, physician, surgeon, or private investigator licensed to practice in this state or any person licensed, certified, or registered by a health care regulatory agency of this state; and

(2) knowingly:

(A) finances or invests funds the person knows or believes are intended to further the commission of an offense under Subsection (a) of this section; or

(B) accepts employment within the scope of the person's license, registration, or certification that results from the solicitation of employment in violation of Subsection (a) of this section.

(c) It is an exception to prosecution under Subsection (a) or (b) of this section that the person's conduct is authorized by the Texas Disciplinary Rules of Professional Conduct or any rule of court.

(d) A person commits an offense if the person:

(1) is an attorney, chiropractor, physician, surgeon, or private investigator licensed to practice in this state or any person licensed, certified, or registered by a health care regulatory agency of this state;

(2) with the intent to obtain professional employment for himself or for another, sends or knowingly permits to be sent to an individual who has not sought the person's employment, legal representation, advice, or care a written communication that:

(A) concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person to whom the communication is addressed or a relative of that person and that was mailed before the 31st day after the date on which the accident or disaster occurred;

(B) concerns a specific matter and relates to legal representation and the person knows or reasonably should know that the person to whom the communication is directed is represented by a lawyer in the matter;

(C) concerns an arrest of or issuance of a summons to the person to whom the communication is addressed or a relative of that person and that was mailed before the 31st day after the date on which the arrest or issuance of the summons occurred;

(D) concerns a lawsuit of any kind, including an action for divorce, in which the person to whom the communication is addressed is a defendant or a relative of that person, unless the lawsuit in which the person is named as a defendant has been on file for more than 31 days before the date on which the communication was mailed;

(E) is sent or permitted to be sent by a person who knows or reasonably should know that the injured person or relative of the injured person has indicated a desire not to be contacted by or receive communications concerning employment;

(F) involves coercion, duress, fraud, overreaching, harassment, intimidation, or undue influence; or

(G) contains a false, fraudulent, misleading, deceptive, or unfair statement or claim.

(e) For purposes of Subsection (d)(2)(E) of this section, a desire not to be contacted is presumed if an accident report reflects that such an indication has been made by an injured person or that person's relative.

(f) An offense under Subsection (a) or (b) of this section is a felony of the third degree.

(g) Except as provided by Subsection (h) of this section, an offense under Subsection (d) of this section is a Class A misdemeanor.

(h) An offense under Subsection (d) of this section is a felony of the third degree if it is shown on the trial of the offense that the defendant has previously been convicted under Subsection (d) of this section.

~~[(1) institutes any suit or claim in which he knows he has no interest;~~

~~[(2) institutes any suit or claim that he knows is false;~~

~~[(3) solicits employment for himself or another to prosecute or defend a suit or to collect a claim; or~~

~~[(4) procures another to solicit for him or another employment to prosecute or defend a suit or to collect a claim.~~

~~[(b) Intent to obtain an economic benefit is presumed if the person accepts employment for a fee, accepts a fee, or accepts or agrees to accept money or any economic benefit.~~

~~[(c) Except as provided by Subsection (d) of this section, an offense under Subsection (a) of this section is a Class A misdemeanor.~~

~~[(d) An offense under Subsection (a)(3) or (a)(4) of this section is a felony of the third degree if it is shown on the trial of the offense that:~~

~~[(1) the defendant has previously been convicted under Subsection (a)(3) or (a)(4) of this section; and~~

~~[(2) the solicitation is performed in whole or in part:~~

~~[(A) in a hospital, funeral establishment, or public or private cemetery or at the scene of an accident;~~

~~[(B) by using a person who is an employee of:~~

~~[(i) this state;~~

~~[(ii) a political subdivision of this state, including a county, municipality, or special purpose district or authority; or~~

~~[(iii) a hospital or funeral establishment; or~~

~~[(C) by impersonating a clergyman, public employee, or emergency assistance worker or volunteer.]~~

(i) [(e)] Final conviction of felony barratry is a serious crime for all purposes and acts, specifically including the State Bar Rules and the Texas Rules of Disciplinary Procedure.

**Floor Amendment No. 40**

Amend C.S.S.B. 1067 in the following manner:

1) In Section 1.01 of the bill, on page 209, beginning with line 25, strike Section 38.02, Penal Code, and substitute in lieu thereof the following:

Sec. 38.02. FAILURE TO IDENTIFY. (a) A person commits an offense if he intentionally refuses to ~~report or~~ give his name, residence address, or date of birth to a peace officer who has lawfully arrested the person and requested the information.

(b) A person commits an offense if he intentionally ~~reports or~~ gives a false or fictitious name, residence address, or date of birth to a peace officer who has:

- (1) lawfully arrested the person;
- (2) lawfully detained the person; or

(3) requested the information from a person that the peace officer has good cause to believe is a witness to a criminal offense.

(c) In this section, "fugitive from justice" means a person for whom a valid arrest warrant has been issued ~~by a magistrate of this state~~, if the warrant has not been executed.

(d) Except as provided by Subsection (e) of this section, an offense under this section is a Class C misdemeanor.

(e) If it is shown on the trial of an offense under this section that the defendant was a fugitive from justice at the time of the offense or that the defendant has been previously convicted of an offense under this section, the offense is a Class B misdemeanor.

#### Floor Amendment No. 41

Amend C.S.S.B. 1067 in the following manner:

1) In Section 1.01 of the bill, on page 211, beginning with line 6, strike Section 38.04, Penal Code, and substitute in lieu thereof the following:

Sec. 38.04. EVADING ARREST OR DETENTION. (a) A person commits an offense if he intentionally flees from a person he knows is a peace officer attempting lawfully to arrest ~~him~~ or detain him ~~for the purpose of questioning or investigating possible criminal activity~~.

(b) ~~It is an exception to the application of this section that the attempted arrest is unlawful or the detention is without reasonable suspicion to investigate.~~

~~(c)~~ It is presumed that the actor recklessly engaged in conduct placing another in imminent danger of serious bodily injury under Subsection ~~(c)~~ ~~(d)~~ of this section if the actor operated a motor vehicle while intoxicated during the commission of the offense. In this subsection, "intoxicated" has the meaning assigned that term by Section 49.01 of this Code ~~[Article 67011-1, Revised Statutes]~~.

~~(c)~~ ~~(d)~~ An offense under this section is a Class B misdemeanor, except that the offense is:

(1) A Class A misdemeanor if the actor, during the commission of the offense, recklessly engaged in conduct that placed another in imminent danger of serious bodily injury; or

(2) a felony of the third degree if a peace officer suffers serious bodily injury or death from any cause other than an assault or homicide

by the actor as a direct result of an attempt by the officer to apprehend the actor while the actor is in flight.

**Amendment No. 42**

Amend C.S.S.B. 1067 in Article 1, Section 1.01, by striking proposed Sections 42.12(b) and (c), Penal Code (page 244, lines 2-6, House Committee Report), and substituting the following:

(b) Except as provided by Subsection (c), an offense under this section is a second degree felony.

(c) An offense under this section is a felony of the first degree if it is shown at the trial of the offense that the actor's conduct caused bodily injury to another.

**Amendment No. 43**

Amend C.S.S.B. 1067 in Article 1, Section 1.01, as follows:

(1) Add a new Section 42.13 to the Penal Code (page 244, between lines 14 and 15, House Committee Report) to read as follows:

Sec. 42.13. DISCHARGING A FIREARM AT A HABITATION, BUILDING, OR VEHICLE. (a) A person commits an offense if the person knowingly discharges a firearm at a habitation, building, or vehicle and is reckless about whether the habitation, building, or vehicle is occupied by an individual.

(b) Except as provided by Subsection (c) of this section, an offense under this section is a felony of the second degree.

(c) An offense under this section is a felony of the first degree if it is shown at the trial of the offense that the actor's conduct caused bodily injury to another.

(d) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section.

(e) In this section, "habitation," "building," and "vehicle" have the meanings assigned by Section 30.01 of this code.

(2) Strike Sections 71.02(a)(8) and (9), Penal Code (page 293, lines 19-21), and substitute the following:

(8) any felony offense under Chapter 32[~~Penal Code~~]; [or]

(9) any offense under Chapter 36; or

(10) any offense under Section 42.13[~~Penal Code~~].

**Amendment No. 44**

Amend C.S.S.B. 1067 as follows:

Page 249, by striking lines 24 through 27 and inserting the following: "by this section does so for a bona fide medical or law enforcement purpose."

**Amendment No. 45**

Amend C.S.S.B. 1067 as follows:

(1) In Section 43.24 (page 250, line 3), after the words "individual younger than" strike the number "17" and add the number "18"

(2) In Section 43.25 (page 251, line 10), after the words "child younger than" strike the number "17" and add the number "18"



(3) In Section 43.25 (page 252, line 9), after the words "younger than" strike the number "17" and add the number "18"

(4) In Section 43.25 (page 252, line 11), after the words "younger than" strike the number "17" and add the number "18"

(5) In Section 43.25 (page 252, line 24), after the words "conduct was" strike the number "17" and add the number "18"

(6) In Section 43.25 (page 253, line 8), after the words "younger than" strike the number "17" and add the number "18"

(7) In Section 43.251 (page 253, line 23), after the words "younger than" strike the number "17" and add the number "18"

(8) In Section 43.26 (page 255, line 5), after the words "younger than" strike the number "17" and add the number "18"

#### Amendment No. 46

Amend C.S.S.B. 1067 as follows:

(1) In Article 1, Section 1.01, Chapter 46, Penal Code, amended Section 46.02 (on page 259, lines 11-19, House Committee Report), in Subsection (b), strike "It is a defense to prosecution under this section that the actor was, at the time of the commission of the offense [Except as provided in Subsection (c), an offense under this section is a Class A misdemeanor.]

~~[(c) An offense under this section is a felony of the third degree if it occurs on any premises licensed or issued a permit by this state for the sale or service of alcoholic beverages.~~

~~[Sec. 46.03. NON APPLICABLE. (a) The provisions of Section 46.02 of this code do not apply to a person]~~ and substitute:

~~"[Except as provided in Subsection (c), an offense under this section is a Class A misdemeanor.~~

~~[(c) An offense under this section is a felony of the third degree if it occurs on any premises licensed or issued a permit by this state for the sale or service of alcoholic beverages.~~

~~[Sec. 46.03. NON APPLICABLE. (a)]~~ The provisions of this section ~~[Section 46.02 of this code]~~ do not apply to a person:"

(2) In Article 1, Section 1.01, Chapter 46, Penal Code, amended Section 46.02 (on page 260, line 16-19, House Committee Report) in Subsection (C), strike "It is a defense to prosecution under this section for the offense of carrying a club that the actor was, at the time of the commission of the offense. [(b) The provision of Section 46.02 of this code prohibiting the carrying of a club does not apply to]" and substitute the following:

"[(b)] The provision of this section ~~[Section 46.02 of this code]~~ prohibiting the carrying of a club does not apply to"

(3) In Article 1, Section 1.01, Chapter 46, Penal Code, amended Section 46.02 (on pages 260-261, House Committee Report) in Subsection (d), strike "It is a defense to prosecution under this section for the offense of carrying a firearm or carrying a club that the actor was, at the time of the commission of the offense. [(c) The prohibition of carrying a handgun or club in Section 46.02 of this code does not apply to]" and substitute the following:

"[c] The prohibition of carrying a handgun or club in this section [~~Section 46.02 of this code~~] does not apply to"

**Amendment No. 47**

Amend C.S.S.B. 1067 in Article 1 of the bill, in Section 1.01, proposed Section 46.02(b)(5)(A), Penal Code (page 260, lines 9-11, House Committee Report), by striking the existing Paragraph (A) and substituting a new Paragraph (A) to read as follows:

"(A) he is engaged in the performance of his duties as a security officer, is [or] traveling to and from his place of assignment, or is at a place other than his normal place of assignment during the period after his work shift begins and before his work shift ends;".

**Floor Amendment No. 48**

Amend C.S.S.B. 1067 as follows:

On page 27, line 6, by striking "17" and inserting in lieu thereof "16".

**Floor Amendment No. 49**

Amend C.S.S.B. 1067 as follows:

Amend Sec. 1.01 Chapter 46 on page 260, line 2, by adding after the word "traveling" the following:", whether or not such travel is completed within a single day or in a single county"

The resulting section will read: "traveling, whether or not such travel is completed in a single day or in a single county;"

Amend Sec. 1.01 Chapter 46 on page 260, after line 15, and before line 16 insert the following:

(7) not engaged in the commission of any other offense under this Code, other than a Class C misdemeanor, not involved in threatening conduct toward another individual, and was not carrying the weapon on his person. For purposes of this subsection "threatening conduct" includes offensive remarks, gestures, and conduct designed to incite fear in another or incite a breach of the peace. "Threatening conduct" is not limited to conduct that would constitute an assault under Section 22.01 of this Code.

**Amendment No. 50**

Amend C.S.S.B. 1067, page 261, line 8, by striking the words "Subsection (f)" and replace with the words "Subsections (f) and (g)".

Insert, after line 12 and before line 13 a new Subsection (g) as follows:

(g) An offense under this section is a Class C misdemeanor if the actor was, at the time of the commission of the offense, not engaged in the commission of any other offense under this Code, other than a Class C misdemeanor, not involved in threatening conduct toward another individual, and was not carrying the weapon on his person. For purposes of this subsection "threatening conduct" includes offensive remarks, gestures, and conduct designed to incite fear in another or incite a breach of the peace. "Threatening conduct" is not limited to conduct that would constitute an assault under Section 22.01 of this Code.

**Amendment No. 51**

Amend C.S.S.B. 1067 in Article 1 of the bill, in Section 1.01, in proposed Section 46.02, Penal Code (page 261, between lines 12 and 13, House Committee Report), by inserting a new Subsection (g) to read as follows:

(g) It is an exception to the application of Subsection (a) that the actor carrying the handgun was, at the time of the commission of the alleged offense, licensed or permitted to carry a handgun by the Department of Public Safety under rules adopted by the department.

**Amendment No. 52**

Amend C.S.S.B. 1067 by adding an appropriately numbered article to read as follows:

ARTICLE \_\_\_\_

SECTION \_\_.01. Article 44.02, Code of Criminal Procedure, is amended to read as follows:

Art. 44.02. DEFENDANT MAY APPEAL. (a) Except as provided by Subsection (b), a [A] defendant in any criminal action has the right of appeal under the rules hereinafter prescribed.

(b) A defendant who has been convicted on a plea of guilty or nolo contendere and for whom the court, on the election of the defendant, assessed punishment that did not exceed the punishment recommended by the prosecutor and agreed to by the defendant, may appeal only with the permission of the trial court.

SECTION \_\_.02. Chapter 44, Code of Criminal Procedure, is amended by adding Article 44.08 to read as follows:

Art. 44.08. EXTENSION OF TIME TO PERFECT APPEAL. A court of appeals may not grant an extension of time for filing a notice of appeal after the expiration of the periods established under Rule 41(b)(1), Texas Rules of Appellate Procedure.

SECTION \_\_.03. (a) Under the terms of Section 22.108(b), Government Code, Rule 40(b)(1), Texas Rules of Appellate Procedure, is disapproved, but only to the extent it permits a defendant to appeal without the permission of the court from a judgment rendered on a plea of guilty or nolo contendere if the punishment assessed does not exceed the punishment recommended by the prosecutor and agreed to by the defendant.

(b) Under the terms of Section 22.108(b), Government Code, Rule 41(b)(2), Texas Rules of Appellate Procedure, is disapproved.

SECTION \_\_.04. The rulemaking authority granted to the court of criminal appeals under Section 22.108, Government Code, is withdrawn with respect to rules of appellate procedure relating to the right of:

(1) a defendant to appeal from a judgment rendered on a plea of guilty or nolo contendere if the punishment assessed does not exceed the punishment recommended by the prosecutor and agreed to by the defendant; and

(2) a court of appeals to grant an extension of time for filing a notice of appeal in a criminal case.

SECTION \_\_.05. (a) The change in law made by this article applies only to an appeal of a criminal case for an offense committed on or after the effective date of this article. For purposes of this section, an offense is committed before the effective date of this article if any element of the offense occurs before the effective date.

(b) An appeal of a criminal case for an offense committed before the effective date of this article is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

SECTION \_\_.06. This article takes effect September 1, 1993.

**Amendment No. 53**

Amend C.S.S.B. 1067 in Section 1.01 of the bill by striking Subsection (a)(1), Section 46.03, Penal Code (page 261, lines 17-19, House Committee Report), and substituting a new Subsection (a)(1) to read as follows:

(1) on the physical premises of a school or an educational institution or a passenger transportation vehicle of a school or an educational institution, whether the school or educational institution is public or private, unless pursuant to written regulations or written authorization of the institution;

**Amendment No. 54**

Amend C.S.S.B. 1067 as follows:

(1) Amend page 264, line 25, by deleting "ammunition".

**Amendment No. 55**

Amend C.S.S.B. 1067 in Article 1, Section 1.01, amended Section 49.02, Penal Code (page 287), by adding a new Subsection (e) to read as follows:

(e) An individual arrested for an offense under this section, on request to the arresting officer within a reasonable time not to exceed two hours after the arrest, is entitled to have a physician, qualified technician, chemist, or registered professional nurse of the individual's own choice draw a specimen and have an analysis made of the individual's blood. An analysis made under this subsection is admissible on the trial of the offense to prove the degree of intoxication, if any, of the individual at the time of the arrest. The refusal or inability of the arresting officer to comply with an individual's request under this subsection is admissible on the trial of the offense.

**Amendment No. 58**

Amend C.S.S.B. 1067, in Article 12, by adding the following section, appropriately numbered, and renumbering existing sections accordingly:

SECTION \_\_\_\_\_. Section 8, Article 42.18, Code of Criminal Procedure, is amended by adding Subsection (p) to read as follows:

(p) In addition to other conditions imposed by a parole panel under this article, the parole panel shall require as a condition of parole or release to mandatory supervision for the 18-month period immediately following the prisoner's release from confinement that a prisoner convicted

of murder, aggravated robbery, aggravated sexual assault, aggravated kidnapping, or indecency with a child by engaging in sexual contact with the child:

(1) carry on or about his person while the prisoner is in a public place a legible copy of the contract or written statement issued to the prisoner under Subsection (g) of this section that can be read without the use of a magnifying glass; and

(2) show a copy of the contract or written statement on request to a peace officer.

**Amendment No. 59**

Amend C.S.S.B. 1067 in Article 1 of the bill, in Section 1.01, in proposed Chapter 22, Penal Code (page 102, lines 21-27, page 103, lines 1 and 2, House Committee Report), by striking the bracketed Section 22.10 and substituting the existing Section 22.10 to read as follows:

**Sec. 22.10. Leaving a Child in a Vehicle**

(a) A person commits an offense if he intentionally or knowingly leaves a child in a motor vehicle for longer than five minutes, knowing that the child is:

(1) younger than seven years of age; and

(2) not attended by an individual in the vehicle who is 14 years of age or older.

(b) An offense under this section is a Class C misdemeanor.

**Floor Amendment No. 60**

Amend C.S.S.B. 1067 by striking lines 25-27 on page 253 and lines 1-7 on page 254, and substituting the following:

"(2) 'Massage' has the meaning assigned to the term 'massage therapy' by Section 1, Chapter 752, Acts of the 69th Legislature, Regular Session, 1985 (Article 4512k, Vernon's Texas Civil Statutes) [means the rubbing, kneading, tapping, compression, vibration, application of friction, or percussion of the human body or parts of it by hand or with an instrument or apparatus].

(3) 'Massage establishment' has the meaning assigned by Section 1, Chapter 752, Acts of the 69th Legislature, Regular Session, 1985 (Article 4512k, Vernon's Texas Civil Statutes) [means a commercial activity the primary business of which is the rendering of massage. The term does not include the businesses of licensed physical therapists, licensed athletic trainers, licensed cosmetologists, or licensed barbers engaged in performing functions authorized by the license held]."

**Amendment No. 61**

Amend C.S.S.B. 1067 in Article 1, Section 1.01, by striking the heading to Section 71.02, Penal Code, and Subsection (a) of that section (page 292, line 21 through page 293, line 21, House Committee Report), and substituting the following:

**Sec. 71.02. ENGAGING IN ORGANIZED CRIMINAL OR STREET GANG ACTIVITY.** (a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of

a combination [~~or as a member of a criminal street gang~~], he commits or conspires to commit one or more of the following:

(1) murder, capital murder, ~~manslaughter~~, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, ~~assault~~, aggravated sexual assault, sexual assault, ~~criminal mischief other than a Class C misdemeanor on the first conviction for the offense, burglary of a vehicle, unauthorized use of a vehicle, obstruction or retaliation, tampering with a witness, or forgery;~~

(2) any [~~felony~~] gambling offense punishable as a Class A misdemeanor;

(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;

(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance, controlled substance analogue, miscellaneous substance under Section 481.119, Health and Safety Code, or dangerous drug, or unlawful possession of a controlled substance, controlled substance analogue, miscellaneous substance under Section 481.119, Health and Safety Code, or dangerous drug through forgery, fraud, misrepresentation, or deception;

(6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;

(7) any unlawful employment, authorization, or inducing of a child younger than 17 years of age in an obscene sexual performance;

(8) any felony offense under Chapter 32[~~, Penal Code~~]; [~~or~~]

(9) any offense under Chapter 36; ~~or~~

(10) any offense under Section 42.12[~~, Penal Code~~].

#### Amendment No. 62

Amend C.S.S.B. 1067 as follows:

(1) In Article 2, add an appropriately numbered section to read as follows and renumber the remaining sections in that article as appropriate:

SECTION 2. Subchapter D, Chapter 481, Health and Safety Code, is amended by adding Sections 481.134 and 481.135 to read as follows:

Sec. 481.134. DRUG-FREE ZONES. (a) In this section:

(1) "Minor" means a person who is 17 years of age or younger.

(2) "School" means a private or public elementary or secondary school.

(3) "Institution of higher education" means any public or private technical institute, junior college, senior college or university, medical or dental unit, or other agency of higher education as defined by Section 61.003, Education Code.

(4) "Playground" means any outdoor facility that is not on the premises of a school and that:

(A) is intended for recreation;

(B) is open to the public; and

(C) contains three or more separate apparatus intended for the recreation of children, such as slides, swing sets, and teeterboards.

(5) "Premises" means real property and all buildings and appurtenances pertaining to the real property.

(6) "Video arcade facility" means any facility that:

(A) is open to the public, including persons who are 17 years of age or younger;

(B) is intended primarily for the use of pinball or video machines; and

(C) contains at least three pinball or video machines.

(7) "Youth center" means any recreational facility or gymnasium that:

(A) is intended primarily for use by persons who are 17 years of age or younger; and

(B) regularly provides athletic, civic, or cultural activities.

(b) The minimum term of confinement for an offense otherwise punishable under Section 481.112, 481.113, 481.114, 481.115, 481.116, 481.117(c), 481.118(c), 481.120(b)(3), (b)(4), (b)(5), or (b)(6), or 481.121(b)(3), (b)(4), (b)(5), or (b)(6) is increased by five years and the maximum fine for the offense is doubled if it is shown on the trial of the offense that the offense was committed:

(1) in, on, or within 1,000 feet of any real property that is owned, rented, or leased to a school or school board;

(2) on a school bus;

(3) in, on, or within 1,000 feet of the premises of an institution of higher education; or

(4) in, on, or within 300 feet of the premises of a playground, public or private youth center, public swimming pool, or video arcade facility.

(c) An offense otherwise punishable under Section 481.117(b), 481.119(a), 481.120(b)(2), or 481.121(b)(2) is a felony of the third degree if it is shown on the trial of the offense that the offense was committed:

(1) in, on, or within 1,000 feet of any real property that is owned, rented, or leased to a school or school board;

(2) on a school bus;

(3) in, on, or within 1,000 feet of the premises of an institution of higher education; or

(4) in, on, or within 300 feet of the premises of a playground, public or private youth center, public swimming pool, or video arcade facility.

(d) An offense otherwise punishable under Section 481.118(b), 481.119(b), 481.120(b)(1), or 481.121(b)(1) is a Class A misdemeanor if it is shown on the trial of the offense that the offense was committed:

(1) in, on, or within 1,000 feet of any real property that is owned, rented, or leased to a school or school board;

(2) on a school bus;

(3) in, on, or within 1,000 feet of the premises of an institution of higher education; or

(4) in, on, or within 300 feet of the premises of a playground, public or private youth center, public swimming pool, or video arcade facility.

(e) Subsection (d) does not apply to an offense if:

(1) the offense was committed inside a private residence; and

(2) no minor was present in the private residence at the time the offense was committed.

(f) Punishment that is increased for a conviction for an offense listed under this section may not run concurrently with punishment for a conviction under any other criminal statute.

Sec. 481.135. MAPS AS EVIDENCE OF LOCATION OR AREA. (a) In a prosecution under Section 481.134, a map produced or reproduced by a municipal or county engineer for the purpose of showing the location and boundaries of drug-free zones is admissible in evidence and is prima facie evidence of the location or boundaries of those areas if the governing body of the municipality or county adopts a resolution or ordinance approving the map as an official finding and record of the location or boundaries of those areas.

(b) A municipal or county engineer may, on request of the governing body of the municipality or county, revise a map that has been approved by the governing body of the municipality or county as provided by Subsection (a).

(c) A municipal or county engineer shall file the original or a copy of every approved or revised map approved as provided by Subsection (a) with the county clerk of each county in which the area is located.

(d) This section does not prevent the prosecution from:

(1) introducing or relying on any other evidence or testimony to establish any element of an offense for which punishment is increased under Section 481.134; or

(2) using or introducing any other map or diagram otherwise admissible under the Texas Rules of Criminal Evidence.

(2) In Article 4, Section 4.01 of the bill, strike Section 3(e) of Article 42.12, Code of Criminal Procedure (page 341, line 26 through page 342, line 7, House Committee Report), and substitute the following:

(e) A defendant is not eligible for community supervision under this section if the defendant:

(1) is convicted of or enters a plea of guilty or nolo contendere to capital murder;

(2) is sentenced to serve a term of confinement under Section 12.35, Penal Code;

(3) is convicted of an offense for which the punishment is enhanced under Section 481.134, Health and Safety Code; or

(4) does not file a sworn motion under Subsection (f) of this section or for whom the judge does not enter in the verdict a finding that the information contained in the motion is true.

(3) In Article 4, Section 4.01 of the bill, strike Section 4(d) of Article 42.12, Code of Criminal Procedure (page 345, lines 2-9, House Committee Report), and substitute the following:



(d) A defendant is not eligible for community supervision under this section if the defendant:

(1) is convicted of capital murder;

(2) is sentenced to serve a term of confinement under Section 12.35, Penal Code;

(3) is convicted of an offense for which the punishment is enhanced under Section 481.134, Health and Safety Code; or

(4) does not file a sworn motion under Subsection (e) of this section or for whom the jury does not enter in the verdict a finding that the information contained in the motion is true.

(4) In Article 4, Section 4.01 of the bill, strike Section 5(d) of Article 42.12, Code of Criminal Procedure (page 349, line 20 through page 350, line 3, House Committee Report), and substitute the following:

(d) In all other cases the judge may grant deferred adjudication unless the defendant:

(1) has previously received deferred adjudication for a felony offense;

(2) is charged with a misdemeanor offense and has previously received deferred adjudication for a misdemeanor offense;

(3) is charged with an offense under Section 49.04, 49.05, 49.06, 49.07, or 49.08, Penal Code;

(4) is charged with an offense for which the punishment may be enhanced under Section 481.134, Health and Safety Code; or

(5) is charged with a person offense punishable as a second degree felony or higher.

(5) In Article 4, Section 4.01 of the bill, add a new Subsection (e), Section 14, Article 42.12, Code of Criminal Procedure (page 380, line 26, House Committee Report), to read as follows:

(e) A judge may not impose the condition of community supervision created under this section on a defendant whose punishment is enhanced under Section 481.134, Health and Safety Code.

(6) In Article 4, Section 4.01 of the bill, add a new Subsection (f), Section 24, Article 42.12, Code of Criminal Procedure (page 412, between lines 17 and 18, House Committee Report), to read as follows:

(f) The attorney representing the state may not enter into an agreement with a defendant to defer prosecution under this section if the defendant is charged with an offense for which the penalty may be enhanced under Section 481.134, Health and Safety Code.

#### **Amendment No. 63**

Amend C.S.S.B. 1067, in Article 5 of the bill, in Section 5.03, in Section 3, Article 42.031, Code of Criminal Procedure, strike proposed Subsection (b) (page 432, lines 15-26, House Committee Report), and substitute the following:

(b) If the sheriff determines that the defendant is conducting himself in a manner that is dangerous to inmates in the county jail or to society as a whole, the sheriff may remove the defendant from participation in the program pending a hearing before the sentencing court. At the hearing, if the court determines that the sheriff's assessment of the defendant's

~~conduct is correct, the court may terminate the defendant's participation in the program and order the defendant to the term of imprisonment that the defendant would have received had he not entered the program. If the court determines that the sheriff's assessment is incorrect, the court shall order the sheriff to readmit the defendant to the program. A defendant shall receive as credit toward his sentence any time served as a participant in the program. [If at a hearing requested by a sheriff the court that sentenced the prisoner to participation in a county jail work release program determines that the prisoner is conducting himself in a manner that is dangerous to inmates in the county jail or to society as a whole, the court shall order the prisoner's participation in the program terminated and order the prisoner to the term or period of confinement or the term of imprisonment that the prisoner would have received had he not entered the program. The prisoner shall receive as credit toward his sentence or period of confinement any time served as a participant in the program.]~~

**Amendment No. 64**

Amend C.S.S.B. 1067 by inserting appropriately numbered sections to read as follows:

SECTION . Section 4, Article 37.07, Code of Criminal Procedure, is amended by adding Subsection (e) to read as follows:

~~(e) In the penalty phase of the trial of a felony offense less than capital in which the punishment is to be assessed by the jury rather than the court, the court shall include in the charge to the jury the most recent information showing the average length of sentence previously imposed by juries in the past two years for the same offense and the average number of days actually served for each year imposed for the same offense in the State of Texas based upon information provided by the Criminal Justice Policy Council pursuant to Section 413.019 of the Government Code. The court will further instruct the jury as follows: "You are instructed that in assessing punishment you are to base your verdict solely upon the facts and circumstances of this case taking into account all the evidence you have heard and all aggravating and mitigating circumstances, if any. You are further instructed that you should consider the full range of punishment as given to you in this charge by this court."~~

SECTION . Chapter 413, Government Code, is amended by adding Section 413.019 to read as follows:

**Section 413.019. TIME-SERVED REPORT.**

~~(a) Every six months, the Criminal Justice Policy Council shall prepare a report which shall include the following information:~~

~~(1) For the two-year period preceding the report, the average sentence imposed by juries for each felony offense provided for by Texas law. This information shall be reflected in the report in such a manner as to indicate the effect on sentencing of enhancement by prior convictions; and~~

~~(2) For each felony offense reported, the average number of days actually served for each year sentenced for the two-year period preceding the report.~~

(b) If, in the discretion of the Criminal Justice Policy Council, there is insufficient data to compute statistically meaningful averages for any period, the Criminal Justice Policy Council may use current sentencing practices and good time policies to estimate the information required by this section.

(c) The Criminal Justice Policy Council shall provide a copy to each presiding judge of the administrative judicial regions of Texas at least once every six months.

(d) The presiding judge of each administrative judicial region receiving a report shall provide a copy of the report to each district court having felony jurisdiction in that region.

SECTION . The Criminal Justice Policy Council shall prepare and distribute the first report required by Section 413.019, Government Code, as added by Section 2 of this Act, not later than January 1, 1994.

SECTION 4. (a) The change in law made by Section 1 of this Act applies only to the jury charge for an offense committed on or after January 1, 1994. For purposes of this section, an offense is committed before January 1, 1994, if any element of the offense occurs before that date.

(b) The jury charge for an offense committed before January 1, 1994, is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

#### Amendment No. 65

Amend C.S.S.B. 1067 by adding an appropriately numbered article to read as follows and by renumbering the existing articles of the bill accordingly:

#### ARTICLE \_\_\_\_

SECTION \_\_\_\_ Chapter 413, Government Code, is amended by adding Section 413.019 to read as follows:

Sec. 413.019. TIME-SERVED REPORT. (a) To the extent funds are available the policy council shall prepare a report for each administrative judicial region of the state. In making the report, the policy council shall list by statutory reference each offense for which there is a conviction in the region during the five-year period immediately preceding the report. The policy council shall then develop categories that group together by length of sentence the various sentences for each listed offense. Finally, the policy council shall average the amount of time actually served by defendants in each sentence grouping for the previous five years. If in the policy council's discretion there is insufficient data to compute a statistically meaningful average during the five years immediately preceding the report, the policy council, using current sentencing practices and good time policies, may estimate the average amount of time served by defendants in a particular sentence grouping.

(b) The policy council shall update the report and provide a copy to each presiding judge of an administrative judicial region at least once every six months.

(c) The presiding judge of each administrative judicial region receiving a report shall provide a copy of the report to each district court having felony jurisdiction in that region.

SECTION \_\_\_\_\_. The Criminal Justice Policy Council shall prepare and distribute the first report required by Section 413.019, Government Code, as added by Section \_\_\_\_ of this Act, not later than January 1, 1995.

**Amendment No. 66**

Amend C.S.S.B. 1067 in Article 1, Section 1.01, by striking proposed Section 49.03, Penal Code (page 287, line 24 through page 288, line 1) and substituting the following:

Sec. 49.03. CONSUMPTION OR POSSESSION OF ALCOHOLIC BEVERAGE IN MOTOR VEHICLE. (a) A person commits an offense if the person operates a motor vehicle in a public place and the motor vehicle has in the passenger compartment of the vehicle a bottle, can, or other receptacle that:

(1) is open, has a broken seal, or has a portion of its contents removed; and

(2) contains an alcoholic beverage.

(b) It is a defense to prosecution under Subsection (a) that the alcoholic beverage is in the possession of:

(1) a passenger in the living quarters of a house trailer;

(2) a passenger, other than the owner of the vehicle, in a vehicle that is, at the time of the possession, engaged in the business of transporting persons for hire;

(3) a doctor or patient with acceptable medical proof, as determined by the Department of Public Safety, that the alcoholic beverage is used for therapeutic purposes; or

(4) a minister, priest, rabbi, accredited Christian Science practitioner, or other similar functionary of a religious organization for religious purposes.

(c) An offense under this section is a Class C misdemeanor.

**Amendment No. 67**

Amend C.S.S.B. 1067 in Article 4 of the bill, in Section 4.01, in amended Section 24, Article 42.12, Code of Criminal Procedure (page 412, between lines 17 and 18, House Committee Report), by inserting a new Subsection (f) to read as follows:

(f) This section does not apply to a defendant arrested for:

(1) an offense under Section 49.04, 49.05, 49.06, 49.07, or 49.08, Penal Code; or

(2) a person offense punishable as a second degree felony or higher.

**Amendment No. 68**

Amend C.S.S.B. 1067, in Article 7, by adding an appropriately numbered section to read as follows and by renumbering subsequent sections accordingly:

SECTION 7.\_\_\_\_. (a) Chapter 48, Code of Criminal Procedure, is amended by adding Article 48.055 to read as follows:

Art. 48.055. RESTORATION OF CIVIL RIGHTS OR CITIZENSHIP PRIVILEGES OF CERTAIN FELONS. (a) Except as provided by

Subsection (b) of this article, an individual convicted of a felony in any court of this state other than a felony involving violence or the threat of violence or involving the delivery of a controlled substance, as defined by Section 481.002(6), Health and Safety Code, may apply as provided by this article for the restoration of civil rights or citizenship privileges forfeited under the laws of this state as a result of the conviction.

(b) An individual may not apply for restoration of civil rights or citizenship privileges under this article unless the individual has:

(1) completed the terms of the sentence for the offense;  
(2) completed 300 hours of work at community service projects of a type and under conditions assigned by courts when sentencing a defendant to community supervision;

(3) completed a course in civics or responsibilities of citizenship that is equivalent to a course taught at a secondary school or an institution of higher education; and

(4) not been convicted of more than one felony under the laws of this state, another state, or the United States.

(c) An application for restoration of civil rights or citizenship privileges under this article must:

(1) be sworn to by the applicant;  
(2) be on a form adopted by the Board of Pardons and Paroles;  
(3) have attached three or more sworn affidavits from citizens of this state who have never been convicted of an offense, except for an offense punishable only by fine, attesting to the good character of the applicant;

(4) include a certificate of proof from the Texas Department of Criminal Justice that the applicant has completed the sentence;

(5) show that the applicant has completed the community service requirements described by Subsection (b)(2) of this article; and

(6) include a certificate or other certified proof that the applicant has completed the course described by Subsection (b)(3) of this article.

(d) The applicant must submit the application to the Board of Pardons and Paroles or an agency designated by the board that agrees to receive applications for restoration of civil rights or privileges under this article. The board or the designated agency shall review the application to determine whether to recommend to the governor the restoration of the individual's civil rights or citizenship privileges. If the board or the designated agency recommends the restoration of the individual's civil rights or citizenship privileges, the board shall forward to the governor its recommendation or the recommendation of the designated agency and the application filed under this section. If the board or the designated agency does not recommend the restoration of the individual's civil rights or citizenship privileges, the board shall provide to the applicant a written statement stating the reason for the denial.

(e) The Board of Pardons and Paroles or the designated agency may require or obtain additional information as necessary to perform a review under Subsection (d) of this article.

(f) On receipt from the Board of Pardons and Paroles of a recommendation to restore the civil rights or citizenship privileges of an

individual, the governor may grant or deny the restoration of civil rights or citizenship privileges to the individual. If the governor grants the restoration of civil rights or citizenship privileges, the governor shall issue a certificate of restoration of civil rights or citizenship privileges. If the governor does not grant the restoration of civil rights or citizenship privileges, the governor shall provide to the individual a written statement stating the reason for the denial.

(g) If an application under this article is denied by the Board of Pardons and Paroles or the governor, the individual may not file another application under this article before the first anniversary of the date of the denial.

(h) A restoration of civil rights or citizenship privileges under this article is a form of pardon that restores all civil rights or citizenship privileges under the laws of this state that an individual forfeits as a result of the individual's conviction of a felony in any court of this state, except as specifically provided in the certificate of restoration.

(b) Article 48.055, Code of Criminal Procedure, as added by this section, applies to an individual convicted of an offense committed before, on, or after the effective date of this Act.

#### **Amendment No. 69**

Amend C.S.S.B. 1067 as follows:

(1) In Section 1.01 of Article 1 of the bill, Chapter 46, Penal Code, insert the following Sections 46.061 and 46.11:

Sec. 46.061. REQUIREMENTS FOR TRANSFER OF FIREARMS BY DEALERS. (a) A dealer of firearms commits an offense if the dealer sells, rents, leases, loans, or gives a firearm to a person and does not offer to sell, rent, lease, loan, or give to the person a trigger lock or similar device intended to prevent the accidental discharge of the firearm.

(b) A dealer of firearms commits an offense if the dealer fails to post in a conspicuous position of the premises where the dealer conducts business a sign that contains the following warning in block letters not less than one inch in height:

"YOU MAY BE PROSECUTED IF A CHILD GAINS  
ACCESS TO YOUR UNSECURED FIREARM"

(c) An offense under this section is a Class C misdemeanor.

(d) It is a defense to prosecution under Subsection (a) of this section that the person to whom the firearm was transferred signed a form provided by the dealer, printed on the sales receipt or lease or rental agreement or printed as a document separate from the receipt or agreement, and containing the following disclosure: "I acknowledge that I have been advised of the availability of a trigger lock or other device intended to prevent accidental discharge."

(e) In this section, "dealer of firearms" means a person licensed as a firearms dealer under Chapter 44, Title 18, United States Code.

Sec. 46.11. MAKING A FIREARM ACCESSIBLE TO A CHILD. (a) In this section:

(1) "Child" means a person younger than 17 years of age.

(2) "Secure" means:

(A) to place in a locked container;  
(B) to render temporarily inoperable by a trigger lock or  
other means; or

(C) to take other steps that a reasonable person would take  
to prevent the access to a readily dischargeable firearm by a child.

(b) A person commits an offense if a child gains access to a firearm  
and the person with criminal negligence:

(1) failed to secure the firearm; or

(2) left the firearm in a place to which the person knew or should  
have known the child would gain access.

(c) It is an affirmative defense to action under this section that the  
child's access to the firearm:

(1) was supervised by a person older than 18 years of age and was  
for hunting, sporting, or other lawful purposes;

(2) consisted of lawful defense by the child of people or property;  
or

(3) was gained by entering property in violation of this code.

(d) Except as provided by Subsection (e) of this section, an offense  
under this section is a Class C misdemeanor.

(e) An offense under this section is a Class B misdemeanor if the  
child discharges the firearm and causes bodily injury to himself or another  
person. An offense under this section is a Class A misdemeanor if the  
child discharges the firearm and causes death to himself or another person.

(2) In Section 4.01 of Article 4 of the bill, in proposed Article 42.12  
of the Code of Criminal Procedure, insert the following new Section 13A:

Sec. 13A. COMMUNITY SUPERVISION FOR MAKING A FIREARM  
ACCESSIBLE TO A CHILD. (a) A judge granting community  
supervision to a defendant convicted of an offense under Section 46.11,  
Penal Code, may require as a condition of community supervision that the  
defendant attend a firearms safety course approved by the National Rifle  
Association.

(b) The judge shall require the defendant to pay the cost of attending  
the firearms safety course under Subsection (a) of this section.

#### **Amendment No. 71**

Amend C.S.S.B. 1067 as follows:

(1) In Article 1, Section 1.01 of the bill, after the semicolon in Section 46.02(b)(5)(C), Penal Code (page 260, line 13), strike "or" and substitute "[or]".

(2) In Article 1, Section 1.01 of the bill, strike Section 46.02(b)(6), Penal Code (page 260, lines 14-15), and substitute the following:

(6) ~~[who is]~~ a peace officer, other than a person commissioned by the Texas State Board of Pharmacy;

(7) an adult probation officer;

(A) employed by a community supervision and corrections  
department under Article 42.131, Code of Criminal Procedure;

(B) authorized to carry a weapon by the director of the  
department and the judges participating in the supervision and  
administration of the department; and

(C) possessing a certificate of firearms proficiency issued by the Commission on Law Enforcement Officer Standards and Education under Section 415.037, Government Code; or

(8) a parole officer;

(A) employed by the pardons and paroles division of the Texas Department of Criminal Justice;

(B) authorized to carry a weapon by the director of the division; and

(C) possessing a certificate of firearms proficiency issued by the Commission on Law Enforcement Officer Standards and Education under Section 415.037, Government Code.

(3) In Article 1, add a new appropriately numbered section to read as follows:

SECTION 1.\_\_\_\_. Subchapter B, Chapter 415, Government Code, is amended by adding Section 415.037 to read as follows:

Sec. 415.037. FIREARMS PROFICIENCY: ADULT PROBATION OFFICERS AND PAROLE OFFICERS. (a) The Commission on Law Enforcement Officer Standards and Education shall adopt separate memorandums of understanding with the community justice assistance division and the pardons and paroles division of the Texas Department of Criminal Justice that establish the respective responsibilities of the commission and each division in developing a basic training program in the use of firearms by adult probation officers or by parole officers. Each memorandum of understanding must establish a program that provides instruction in:

(1) legal limitations on the use of firearms and on the powers and authority of adult probation officers or parole officers;

(2) range firing and procedure, and firearms safety and maintenance; and

(3) other topics determined by the commission and the divisions to be necessary for the responsible use of firearms by adult probation officers or parole officers.

(b) The commission and each division by rule shall adopt the memorandum of understanding establishing the basic training program.

(c) The training program may be conducted at a facility operated by the commission or at a school certified by the commission under Section 415.031. The commission or the school conducting the program shall issue a certificate of firearms proficiency to each adult probation officer or parole officer who the entity conducting the program determines has successfully completed the program described by Subsection (a).

(d) A person attending a training program shall pay a fee that the commission determines is reasonable and necessary to the entity conducting the training program.

#### **Amendment No. 1 on Third Reading**

Amend C.S.S.B. 1067 on third reading, in Section 3g(a), Article 42.12, Code of Criminal Procedure, as amended in Second Reading Amendment No. 2 (Place/Brady), as follows:



(1) Strike Section 3g(a)(1)(A) and substitute a new Section 3g(a)(1)(A) to read as follows:

"(A) Section 19.02 (Murder), if the offense is punished as a first degree felony;".

(2) Strike Section 3g(a)(1)(D) and substitute a new Section 3g(a)(1)(D) to read as follows:

"~~(D)(B)~~ Section 20.04 (Aggravated kidnapping) if the offense is punished as a first degree felony;".

The amendments were read.

Senator Whitmire moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on S.B. 1067 before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Whitmire, Chair; West, Parker, Wentworth, and Armbrister.

#### SENATE BILL 532 WITH HOUSE AMENDMENTS

Senator Whitmire called S.B. 532 from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

#### Amendment

Amend S.B. 532 by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to the creation of the state jail division of the Texas Department of Criminal Justice and to the operations of other divisions of the department and community supervision and corrections departments, to the certification of certain offenders, and to the confinement of certain felons convicted of state jail felonies or awaiting transfer from county jails to the institutional division of the Texas Department of Criminal Justice; making an appropriation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

#### ARTICLE 1

SECTION 1.01. Section 491.001(a), Government Code, is amended by adding Subdivision (7) to read as follows:

(7) "State jail division" means the state jail division of the department.

SECTION 1.02. Section 493.002(a), Government Code, is amended to read as follows:

- (a) The following divisions are within the department:
- (1) the community justice assistance division;
  - (2) the institutional division; ~~and~~
  - (3) the pardons and paroles division; and
  - (4) the state jail division.

SECTION 1.03. Chapter 493, Government Code, is amended by adding Section 493.0051 to read as follows:

Sec. 493.0051. STATE JAIL DIVISION. The state jail division shall operate and manage state jails to confine defendants described by Section 507.002.

SECTION 1.04. Section 494.008(a), Government Code, is amended to read as follows:

(a) The director of the institutional division or the director's designee may authorize employees of the institutional division to transport inmates and to apprehend escapees from any [the] division of the department. An employee acting under authority granted by the director has the same powers and duties as a peace officer under the laws of this state, except that the employee may not act without receiving express orders from the director or the director's designee, and may exercise those powers and perform those duties throughout the state but only during duty hours.

SECTION 1.05. Section 498.003(e), Government Code, is amended to read as follows:

(e) If a person confined in a county jail or a transfer facility operated by the institutional division is transferred to any other facility of the institutional division for confinement purposes, the director of the institutional division shall award good conduct time to the person up to an amount equal to that which the person could have accrued during the period of confinement [imprisonment] in the county jail or transfer facility if instead the person had been imprisoned [incarcerated] in the division during that period.

SECTION 1.06. Chapter 499, Government Code, is amended by adding Subchapter G to read as follows:

#### SUBCHAPTER G. TRANSFER FACILITIES

Sec. 499.151. AUTHORITY TO OPERATE OR CONTRACT FOR TRANSFER FACILITIES. (a) The institutional division may operate, maintain, and manage transfer facilities to confine inmates described by Section 499.152, and the board may finance and construct those facilities. The institutional division, with the approval of the board, may contract with a private vendor or the commissioners court of a county for the financing, construction, operation, maintenance, or management of a transfer facility.

(b) The board and the institutional division shall ensure that a service described by Subsection (a) is provided in compliance with standards established under Section 511.017, whether the board or the institutional division provides the service or contracts with an entity listed by Subsection (a) for the provision of the service.

(c) A transfer facility authorized by this subchapter may be located on private land or on land owned by the federal government, the state, or a

political subdivision of the state. The board may accept land donated for that purpose.

(d) A commissioners court of a county may not enter into a contract or receive a grant under this section unless:

(1) the commissioners court first consults with the community justice council serving the county; and

(2) the most recent community justice plan for the county served by the community justice council that has been approved by the community justice assistance division describes the contract or grant.

Sec. 499.152. ELIGIBLE INMATES. The institutional division may confine an inmate in a transfer facility authorized by this subchapter:

(1) only if paperwork and processing required under Section 8(a), Article 42.09, Code of Criminal Procedure, for transfer of the inmate to the division has been completed; and

(2) only during a period in which the inmate would otherwise be confined in a county jail awaiting transfer to the division following conviction of a felony or revocation of probation, parole, or release on mandatory supervision.

Sec. 499.153. ADMISSIONS POLICY. The board shall develop, adopt, and enforce:

(1) an admissions policy to accept from county jails eligible inmates described by Section 499.152 for confinement in transfer facilities authorized by this subchapter; and

(2) a transfer policy to transfer eligible inmates described by Section 499.152 from transfer facilities authorized by this subchapter to other facilities of the institutional division.

Sec. 499.154. CUSTODY STATUS: GOOD CONDUCT TIME. An inmate described by Section 499.152 confined in a transfer facility authorized by this subchapter earns good conduct time in the same manner and subject to the same rules as if the inmate were confined in a county jail awaiting transfer to the institutional division.

Sec. 499.155. DURATION OF CONFINEMENT. (a) Except as provided by Subsection (b), the institutional division may not confine an inmate described by Section 499.152 in a transfer facility authorized by this subchapter for a period that exceeds 18 months.

(b) If an inmate described by Section 499.152 is confined in a transfer facility, is released from or transferred from the transfer facility or returned to the convicting county under court order, and is convicted of a subsequent offense, is returned from the convicting county, or is the subject of a revocation of parole or mandatory supervision, the institutional division shall not calculate the previous period of confinement in determining the maximum period the defendant may be confined in a transfer facility following conviction of the subsequent offense, return from the convicting county, or revocation.

(c) If an inmate is discharged or released on parole or mandatory supervision from a transfer facility, the inmate is entitled to receive release or discharge money from the institutional division in the same amount as an inmate is entitled to receive on release or discharge from any other facility of the institutional division under Section 501.015.

SECTION 1.07. Subtitle G, Title 4, Government Code, is amended by adding Chapter 507 to read as follows:

**CHAPTER 507. JAIL DIVISION**

**SUBCHAPTER A. STATE JAIL FELONY FACILITIES**

Sec. 507.001. AUTHORITY TO OPERATE OR CONTRACT FOR STATE JAIL FELONY FACILITIES. (a) The state jail division may operate, maintain, and manage state jail felony facilities to confine inmates described by Section 507.002, and the board may finance and construct those facilities. The state jail division, with the approval of the board, may contract with the institutional division, a private vendor, a community supervision and corrections department, or the commissioners court of a county for the operation, maintenance, or management of a state jail felony facility. The state jail division or the community justice assistance division, with the approval of the board, may make a grant to a community supervision and corrections department or a county for the construction, operation, maintenance, or management of a state jail felony facility. A community supervision and corrections department or the commissioners court of a county that contracts or receives a grant under this section may subcontract with a private vendor for the provision of any or all services described by this subsection. The board may contract with a private vendor or the commissioners court of a county for the financing or construction of a state jail felony facility.

(b) The state jail division, after consultation with the advisory committee on community supervision and corrections department management to the judicial advisory council to the community justice assistance division, shall propose and the board shall adopt reasonable rules and procedures establishing minimum requirements for work programs and programs of rehabilitation, education, and recreation in state jail felony facilities. For each state jail felony facility, the state jail division shall request the assistance of the community supervision and corrections departments and the community justice councils served by the facility in developing programs for defendants confined in the facility. In developing the programs, the state jail division shall attempt to structure programs so that they are operated on a 90-day cycle.

(c) The board shall ensure that a service described by Subsection (a) is provided in compliance with standards established under Section 511.017, whether the board, the state jail division, or the community justice assistance division provides the service or contracts with or makes a grant to an entity listed in Subsection (a) for the provision of the service. The board shall ensure that a program described by Subsection (b) is provided in compliance with minimum requirements established under Subsection (b), whether the state jail division or the community justice assistance division provides the service or contracts with or makes a grant to an entity listed in Subsection (a) for the provision of the service.

(d) A state jail felony facility authorized by this subchapter may be located on private land or on land owned by the federal government, the state, a judicial district, or a political subdivision of the state. The board may accept land donated for that purpose.

(e) A commissioners court of a county or a community supervision and corrections department may not enter into a contract or receive a grant under this section unless:

(1) the commissioners court or department first consults with the community justice council serving the county or serving the department; and

(2) the most recent community justice plan for the county or department served by the community justice council that has been approved by the community justice assistance division describes the contract or grant.

Sec. 507.002. ELIGIBLE DEFENDANTS. The state jail division may confine in a state jail felony facility authorized by this subchapter defendants required by a judge to serve a term of confinement in a state jail felony facility following conviction of an offense punishable as a state jail felony.

Sec. 507.003. REGIONS. The state jail division shall propose and the board shall designate not fewer than nine regions in the state for the purpose of providing regional state jail felony facilities. In proposing regions, the division shall ensure that regions are designed to efficiently serve community supervision and corrections departments. The division may not propose a region that contains a part of an area served by a community supervision and corrections department. The division may propose a region that contains only one judicial district, but only if the judicial district serves a municipality with a population of 400,000 or more. Any other provision of law that would otherwise require the board to designate regions on the basis of uniform service regions does not apply to this section.

Sec. 507.004. ALLOCATION POLICIES. The state jail division shall propose and the board shall develop, adopt, and enforce:

(1) a regional allocation policy to allocate the number of facilities and beds to each region established under Section 507.003; and

(2) an intra-regional allocation policy for each region, to allocate the number of facilities and beds within a region to the community supervision and corrections departments in that region, unless those departments by their own agreement establish the allocation of beds in the region.

Sec. 507.005. IMPLEMENTATION. (a) The board shall provide for the financing, construction, operation, maintenance, and management of the state jail felony facilities for which funds are appropriated under the General Appropriations Act or any other Act of the 73rd Legislature, Regular Session, 1993, in two phases.

(b) In phase one, the board and the state jail division shall provide for state jail felony facilities that contain not more than 70 percent of the beds for which funds are appropriated as described by Subsection (a). The board shall consider the regions established under Section 507.003 and attempt to place state jail felony facilities at locations that are sufficiently geographically diverse to serve the needs of each of those regions. The state jail division, with the approval of the board, shall contract with the institutional division for the construction, operation, maintenance, and management of facilities included in phase one.

(c) In phase two, the board and at the discretion of the board either or both the state jail division or the community justice assistance division shall provide for state jail felony facilities that contain the percentage of beds for which funds are appropriated as described by Subsection (a) but that are not included in phase one. The state jail division or the community justice assistance division, with the approval of the board, shall attempt to contract with private vendors or commissioners courts of counties for the construction of state jail felony facilities included in phase two and shall attempt to contract with private vendors or contract with or make grants to commissioners courts of counties or community supervision and corrections departments for the operation, maintenance, or management of state jail felony facilities included in phase two. The state jail division or the community justice assistance division, with the approval of the board, may establish pilot programs with counties or community supervision and corrections departments in which the counties and departments agree to operate state jail felony facilities included in phase two under a formula of mutual accountability for sentencing practices and the funding of criminal justice programs. A commissioners court of a county or a community supervision and corrections department may not enter into a contract or receive a grant under this subsection unless:

(1) the commissioners court or department first consults with the community justice council serving the county or serving the department; and

(2) the most recent community justice plan for the county or department served by the community justice council that has been approved by the community justice assistance division describes the contract or grant.

(d) The board, not later than October 1, 1993, shall adopt a timetable for the implementation of phase one and phase two. The board shall design the timetable in a manner that permits the institutional division to meet the obligations imposed on the division by Section 499.121(c).

(e) This section expires September 1, 1995.

Sec. 507.006. USE OF FACILITY FOR TRANSFER INMATES. (a) Notwithstanding any other provision of this subchapter, the state jail division, with the approval of the board, may designate one or more state jail felony facilities to house exclusively inmates who are eligible for confinement in a transfer facility under Section 499.152, but only if the designation does not deny placement in a state jail felony facility of defendants required to serve terms of confinement in a facility on conviction of state jail felonies.

(b) Sections 499.154 and 499.155 apply to an inmate eligible for confinement in a transfer facility under Section 499.152 who is nonetheless confined in a state jail felony facility in the same manner as if the inmate were confined in a transfer facility.

(c) This section expires September 1, 1997.

#### SUBCHAPTER B. MISCELLANEOUS PROVISIONS

Sec. 507.021. EMPLOYEES: LIMITED LAW ENFORCEMENT POWERS. (a) The director of the state jail division or the director's designee may authorize employees of the division to transport defendants

and to apprehend escapees from any division of the department. An employee acting under authority granted by the director has the same powers and duties as a peace officer under the laws of this state, except that the employee may not act without receiving express orders from the director or the director's designee, and may exercise those powers and perform those duties throughout the state, but only during duty hours.

(b) The state jail division may allow employees who are granted law enforcement authority under this section to assist peace officers in any county of the state if the assistance is requested for the purpose of apprehending an escapee of a municipal or county jail and if the division determines that the assistance will not jeopardize the safety and security of the division and its personnel. An employee who assists a peace officer in the performance of the officer's duties has the same powers and duties as the officer requesting assistance.

(c) An employee of the state jail division may not enforce the laws of this state relating to the prevention of misdemeanors and the detention of persons who commit misdemeanors, including laws regulating traffic and the use of state highways.

(d) An employee described by Subsection (a) may not be considered a peace officer for any purposes other than those specified under this section and is not required to be certified by the Commission on Law Enforcement Officer Standards and Education.

Sec. 507.022. EMPLOYEES' SALARIES, ROOM AND BOARD, AND MEDICAL CARE. (a) Salaries of employees of the state jail division and the provision of board, lodging, uniforms, and other provisions to employees are as provided by the General Appropriations Act.

(b) Employees of the state jail division who are injured in the line of duty are entitled to receive free medical care and hospitalization from institutional division doctors and the institutional division hospital.

Sec. 507.023. AIDS AND HIV EDUCATION; TESTING. (a) The state jail division shall establish and provide education programs to educate state jail division employees and defendants in state jail felony facilities about AIDS and HIV in the same manner as the institutional division establishes and provides programs for employees and inmates under Section 501.054.

(b) The state jail division shall adopt a policy for handling a defendant with AIDS or HIV and may test a defendant for AIDS or HIV in the same manner and subject to the same conditions as apply to the institutional division under Section 501.054.

(c) In this section, "AIDS" and "HIV" have the meanings assigned by Section 81.101, Health and Safety Code.

Sec. 507.024. TRANSPORTATION OF DEFENDANTS. The board shall adopt rules to provide for the safe transfer of defendants from counties to state jail felony facilities. A sheriff may transport defendants to a state jail felony facility if the sheriff is able to perform the service as economically as if the service were performed by the division. The state jail division is responsible for the cost of transportation of defendants to the division. Defendants may be transported with other persons being transported to the custody of the department provided appropriate security precautions prescribed by policies of the department are taken.

Sec. 507.025. MEDICAL CARE. The state jail division, with the approval of the board, may contract with the institutional division, a private vendor, or any public health care provider for the provision of medical services to defendants in state jail felony facilities.

Sec. 507.026. CHANGE IN DESIGNATION OF FACILITY. The board may designate any facility under its control as a state jail felony facility and confine state jail felons in that facility.

SECTION 1.08. Subsection (h) and (i) of Section 501.059, Government Code as added by S.B. 378, Acts of the 73rd Legislature, Regular Session, 1993 are amended to read as follows:

(h) To the extent possible the committee shall integrate the preferred provider arrangement network with the public medical schools of this state and the component and affiliated hospitals of those medical schools.

(i) For those services for which the public medical schools and their components and affiliates cannot provide, the committee shall initiate a competitive bidding process for contracts under this section to provide medical care to inmates confined in the institutional division.

SECTION 1.09. Chapter 511, Government Code, is amended by adding Section 511.017 to read as follows:

Sec. 511.017. DUTIES RELATED TO STATE JAIL FELONY FACILITIES AND INSTITUTIONAL DIVISION TRANSFER FACILITIES.

(a) In this section:

(1) "State jail division" means the state jail division of the Texas Department of Criminal Justice.

(2) "State jail felony facility" means a state jail felony facility authorized by Subchapter A, Chapter 507.

(3) "Transfer facility" means a transfer facility operated by the institutional division of the Texas Department of Criminal Justice under Subchapter G, Chapter 499.

(b) The commission shall provide the state jail division with consultation and technical assistance relating to the operation and construction of state jail felony facilities.

SECTION 1.10. The state jail division of the Texas Department of Criminal Justice shall propose and the Texas Board of Criminal Justice, not later than October 1, 1993, shall designate regions as described by Section 507.003, Government Code, as added by this article, and shall adopt the allocation policies described by Section 507.004, Government Code, as added by this article.

SECTION 1.11. Section 811.001(8), Government Code, is amended to read as follows:

(8) "Custodial officer" means a member of the retirement system who is employed by the institutional division or the state jail division of the Texas Department of Criminal Justice [Corrections] and certified by the [that] department as having a normal job assignment that requires frequent or infrequent regularly planned contact with, and in close proximity to, inmates of the institutional division or inmates or defendants confined in the state jail division [that institution] without the protection of bars, doors, security screens, or similar devices and includes assignments normally involving supervision or the potential for supervision of inmates



in inmate housing areas, educational or recreational facilities, industrial shops, kitchens, laundries, medical areas, agricultural shops or fields, or in other areas on or away from property of the institutional division or the state jail division ~~[institution]~~.

SECTION 1.12. Section 2(a)(4), Chapter 86, Acts of the 60th Legislature, Regular Session, 1967 (Article 6228f, Vernon's Texas Civil Statutes), is amended to read as follows:

(4) "Custodial personnel of the Texas Department of Corrections" means a member of the class of employees of the institutional division or the state jail division of the Texas Department of Criminal Justice formally designated as custodial personnel by the Texas Board of Criminal Justice or its predecessor in function ~~[the class of employees of the Department of Corrections designated as custodial personnel by a resolution adopted by the Texas Board of Corrections]~~.

SECTION 1.13. Section 9, Chapter 86, Acts of the 60th Legislature, Regular Session, 1967 (Article 6228f, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9. DUTY OF THE TEXAS BOARD OF CRIMINAL JUSTICE ~~[CORRECTIONS]~~. The Texas Board of Criminal Justice shall adopt and include in its minutes a formal designation identifying the classes of persons who are custodial personnel of the institutional division or the state jail division of the Texas Department of Criminal Justice so that there is no uncertainty about which persons are custodial personnel ~~[It shall be the duty of the Texas Board of Corrections to adopt a formal designation spread on its minutes identifying the classes of persons who are custodial personnel of the Texas Department of Corrections. It is the intent of the Legislature in enacting this provision that the constitutional provisions of Section 51-d, Article III, of the Texas Constitution, be observed in order that there be no uncertainty about which persons are custodial personnel and which are not]~~.

SECTION 1.14. Subchapter B, Chapter 13, Education Code, is amended by adding Section 13.0323 to read as follows:

Sec. 13.0323. RESTRICTED CERTIFICATION OF INDIVIDUAL CONVICTED OF A CRIMINAL OFFENSE. (a) The State Board of Education by rule shall provide for restricted certification as a teacher of an individual convicted of a criminal offense who would be eligible for certification to teach in a public school in this state if the individual had not been convicted of the offense.

(b) An individual certified under this section may serve as a teacher only in a correctional facility operated by an agency of the state or a political subdivision of the state.

SECTION 1.15. This article takes effect September 1, 1993.

## ARTICLE 2

SECTION 2.01. Article 42.13, Code of Criminal Procedure, is amended to read as follows:

Art. 42.13. COMMUNITY JUSTICE ASSISTANCE DIVISION OF THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE

Sec. 1. PURPOSE; DEFINITIONS. (a) The purpose of this article is to:

(1) allow localities to increase their involvement and responsibility in developing sentencing programs that provide effective sanctions for criminal defendants ~~[felony offenders]~~;

(2) provide increased opportunities for criminal defendants ~~[felony offenders]~~ to make restitution to victims of crime through financial reimbursement or community service;

(3) provide increased use of community penalties designed specifically to meet local needs; and

(4) promote efficiency and economy in the delivery of community-based correctional programs consistent with the objectives defined by Section 1.02, Penal Code.

(b) In this article:

(1) "Board" means the Texas Board of Criminal Justice.

(2) "Community corrections facility" means a physical structure or any portion of a structure designated as a community corrections facility by a community justice council for the purpose of confining defendants and providing services and programs to modify criminal behavior, deter criminal activity, protect the public, and restore victims of crime. The term includes:

(A) a restitution center;

(B) a court residential treatment facility;

(C) a substance abuse treatment facility;

(D) a custody facility or boot camp;

(E) a facility for an offender with a mental impairment, as defined by Section 614.001, Health and Safety Code; and

(F) an intermediate sanction facility.

(3) "Department" means a community supervision and corrections department established under Article 42.131 of this code.

(4) ~~{ }~~ "Division" means the community justice assistance division of the Texas Department of Criminal Justice.

(5) "State aid" means funds appropriated by the legislature to the division to provide financial assistance to:

(A) judicial districts, for the administration of departments and the development or improvement of community supervision services;

(B) judicial districts, counties, municipalities, and nonprofit organizations for:

(i) the development or improvement of community corrections facilities; and

(ii) complying with standards and policies adopted by the division or board; and

(C) counties, as performance rewards.

Sec. 2. STANDARDS AND PROCEDURES. (a) The division shall propose and the board shall adopt reasonable rules establishing:

(1) ~~[establishing]~~ minimum standards for programs, community corrections facilities and other facilities, equipment, and other aspects of the operation of departments;

(2) ~~[establishing an application process and procedures for funding community corrections facilities; and~~

~~[(3)]~~ a list and description of core services that should be provided by each department;

~~(3) methods for measuring the success of community supervision and corrections programs, including methods for measuring rates of diversion, program completion, and recidivism; and~~

~~(4) [establishing] a format for community justice plans.~~

(b) In establishing standards relating to the operation of departments, the division shall consider guidelines ~~[previously]~~ developed and presented by the advisory committee on community supervision and corrections ~~[probation]~~ department management to the judicial advisory council established under Section 493.003(b), Government Code ~~[Texas Adult Probation Commission]~~.

(c) After consultation with the Texas Commission on Alcohol and Drug Abuse, the division by rule shall establish standards for the operation of substance abuse facilities and programs by the division and by departments. A facility or program operating under the standards is not required to be licensed or otherwise approved by any other state or local agency.

Sec. 3. RECORDS, REPORTS, AND INFORMATION SYSTEMS. (a) The division shall require each department to:

(1) keep financial and statistical records determined necessary by the division;

(2) submit a community justice plan and all supporting information requested by the division; ~~if Section 3 of Article 42.131 of this code applies to the department; and~~

(3) present data requested by the division as necessary to determine the amount of state aid for which the department is eligible; and

~~(4) submit periodic financial audits and statistical reports to the division.~~

(b) The division shall develop an automated ~~[probationer]~~ tracking system that:

(1) is capable of receiving tracking data from community supervision and corrections departments' caseload management and accounting systems;

(2) is capable of tracking the defendant ~~[probationer]~~ and the sentencing event at [conviction for] which the defendant was placed on community supervision ~~[probationer received probation]~~ by name, arrest charge code, and incident number;

(3) provides the division with the statistical data it needs to support budget requests and satisfy requests for information; and

(4) is compatible with the requirements of Chapter 60 of this code and the information systems used by the institutional division and the pardons and paroles ~~[Board of Pardons and Paroles]~~ division of the department.

Sec. 4. INSPECTIONS; AUDITS; EVALUATIONS. (a) The division may inspect and evaluate a department or conduct audits of financial records of a department at any reasonable time to determine compliance with the division's rules and standards.

(b) The division, in cooperation with the Criminal Justice Policy Council, annually shall evaluate not less than 10 percent of the facilities described by Section 5 of this article and funded with state aid by applying risk assessment instruments developed by the division to determine whether persons confined exhibit levels of risk or needs that if not addressed through the confinement and treatment in a community corrections facility make it probable that the persons would pose unacceptable levels of threat to public safety through additional criminal behavior.

(c) The division shall authorize payments under Section 11(a)(1) of this article only if the division determines that the department has made a reasonable effort to maintain workloads for supervising officers that do not exceed the following ratios:

(1) one officer or full-time equivalent per 25 cases, with a workload unit value of 4 per case, for cases requiring intensive supervision;

(2) one officer or full-time equivalent per 40 cases, with a workload unit value of 2.5 per case, for cases requiring maximum supervision;

(3) one officer or full-time equivalent per 75 cases, with a workload unit value of 1.33 per case, for cases requiring a medium level of supervision; and

(4) one officer or full-time equivalent per 100 cases, with a workload unit value of 1 per case, for cases requiring a minimum level of supervision.

Sec. 5. COMMUNITY CORRECTIONS FACILITIES And State Jail Felony Facilities. (a) In order to establish and maintain community corrections facilities and state jail felony facilities, the division may:

(1) [develop standards for the physical plant and operation of community corrections facilities and standards for the programs offered by those facilities;

[(2)] fund division-managed [community corrections] facilities [if local contractors are not available or do not meet the standards established by the division];

(2) [(3)] fund contracts for [management of community corrections] facilities that are managed by departments, counties, or vendors;

(3) [(4)] provide funds to departments for the renovation of leased or donated buildings for use as [community corrections] facilities;

(4) [(5)] accept ownership of real property pursuant to an agreement under which the division agrees to construct a [community corrections] facility and offer the facility for lease;

(5) [(6)] allow departments, counties, or municipalities to accept and use buildings provided by units of local governments, including rural hospital districts, for use as [community corrections] facilities;

(6) [(7)] provide funds to departments, counties, or municipalities to lease, purchase, or construct buildings or to lease or purchase[-] land[-] or other real property for use as [community corrections] facilities, lease or purchase equipment necessary for the operation of facilities, and pay other costs as necessary for the management and operation of facilities; and

~~[(8) require that all community corrections facilities be in compliance with state and local safety laws;~~

~~[(9) develop standards for disciplinary rules to be imposed on residents of community corrections facilities;~~

~~[(10) require departments to provide data requested by the division;]~~

~~(7) [(11)] be a party to a contract for correctional services or approve a contract for those services if the state, on a biennial appropriations basis, commits to fund a portion of the contract[; and~~

~~[(12) develop standards for the granting of emergency furloughs for residents confined in community corrections facilities].~~

(b) The division may require that community corrections facilities comply with state and local safety laws and may develop standards for:

(1) the physical plant and operation of community corrections facilities;

(2) programs offered by community corrections facilities;

(3) disciplinary rules for residents of community corrections facilities; and

(4) emergency furloughs for residents of community corrections facilities.

(c) Minimum standards for community corrections facilities must include requirements that a facility:

(1) provide levels of security appropriate for the population served by the facility, including as a minimum a monitored and structured environment in which a resident's interior and exterior movements and activities can be supervised by specific destination and time; and

(2) accept only those residents who are physically and mentally capable of participating in any program offered at the facility that requires strenuous physical activity, if participation in the program is required of all residents of the facility.

(d) The board may designate any community corrections facility that is an intermediate sanction facility as a state jail felony facility and confine state jail felons in that facility.

Sec. 6. COMMUNITY JUSTICE PLAN. (a) ~~The [Beginning on September 1, 1991, the]~~ division shall require as a condition to payment of state aid to a department or county under Section 11 ~~[or Section 13]~~ of this article and eligibility for payment of costs under Section 499.124, Government Code, that a community justice plan be submitted for the department. The community justice council shall submit the plan required by this subsection. A community justice council may not submit a plan under this section unless the plan is first approved by the district judges who manage the department served by the council. The council shall submit a revised plan to the division each odd-numbered year by a date designated by the division.

(b) A community justice plan required under this section must include:

~~(1) [a summary of services provided by or available to the department at the time the plan is submitted;~~

~~[(2) a description of proposed new facilities or programs or significant expansion of existing facilities or programs and a summary of~~

~~how the department proposes to use the facilities or programs, with a particular emphasis on the plans of the department to expand the department's use of:~~

- ~~[(A) electronic monitoring programs;~~
- ~~[(B) testing for controlled substances; and~~
- ~~[(C) community corrections facilities, including:~~
  - ~~[(i) restitution facilities;~~
  - ~~[(ii) court residential treatment facilities;~~
  - ~~[(iii) substance abuse treatment facilities;~~
  - ~~[(iv) custody facilities and boot camps;~~
  - ~~[(v) facilities for offenders described by Section 1,~~

~~Article 4413(49a), Revised Statutes;~~

- ~~[(vi) intermediate sanction facilities;~~
- ~~[(vii) pre-parole transfer facilities;~~
- ~~[(viii) halfway houses; and~~
- ~~[(ix) work facilities;~~

~~[(3) a description of services for offenders needed within the area served by the department, including services needed within an accessible radius of any facility or program that is proposed;~~

~~[(4) a copy or description of any proposed contract that is required to achieve proposed facilities or programs; and~~

~~[(5) a statement of goals and priorities and of commitment by the community justice council, the district judges who manage the department, and the department to achieve a targeted level of alternative sanctions;~~

~~(2) a description of methods for measuring the success of programs provided by the department or provided by an entity served by the department; and~~

~~(3) a proposal for the use of state jail felony facilities and, at the discretion of the community justice council, a regional proposal for the construction, operation, maintenance, or management of a state jail felony facility by a county, a community supervision and corrections department, or a private vendor under a contract with a county or a community supervision and corrections department.~~

~~[(c) A community justice plan submitted to the division by a department or by departments acting in cooperation may include:~~

~~[(1) implementation processes for division-approved program evaluation and data collection;~~

~~[(2) a description of existing and proposed personnel training programs, community service programs, and restitution programs;~~

~~[(3) a description of existing and proposed programs to recruit volunteer community service programs to work with offenders served by the department; and~~

~~[(4) other details or options that the community justice council wishes to include.~~

~~[(d) A community justice plan submitted under this section must include, in addition to the information required by Subsection (b) of this section, a budget and program schedule detailing the application of state funding to the programs proposed in the plan and any other information required by the division.]~~

Sec. 7. OFFICER CERTIFICATION. (a) The division shall establish officer certification programs for department residential officers and department supervision officers. Each program must include coursework relating to the proper performance of the officer's duties and an examination prepared by the division administered at the conclusion of the coursework. The examination must test officers on knowledge required for the proper performance of their duties. Each officer who satisfactorily completes the coursework and examination shall be certified.

(b) Except as provided by Subsections (d), (e), and (f) of this section, a department may not continue to employ an officer unless the officer is exempt from certification requirements on the effective date of this Act or satisfactorily completes the coursework and examination required by this section not later than the first anniversary of the date on which the officer begins employment with the department.

(c) The division shall provide adequate notification of the results of examinations and provide other relevant information regarding examinations as requested by examinees.

(d) The division may extend the period for the coursework and examination requirements for an officer under Subsection (b) or (f) of this section for an additional period not to exceed one year because:

(1) of a need by the department to increase hiring to reduce caseloads to a level necessary to receive full state aid; or

(2) an extenuating circumstance, as determined by the division director, prevents the officer from completing the coursework and examination within the required period [for officers employed by a department that during the initial one-year period increases hiring in order to reduce caseloads as required by law as a condition to full state funding].

(e) The division may waive certification requirements other than a fee requirement for an applicant with a valid certificate from another state that has certification requirements substantially similar to those of this state.

(f) A department may not continue to employ a residential officer unless the officer successfully completes the coursework and examination requirement under this section before the first anniversary of the date on which the officer begins the officer's initial assignment to a residential facility [employment with the department]. The division shall make the first certification coursework and examination required by this subsection available not later than September 1, 1990. A residential officer employed by a department before September 1, 1990, is not required to successfully complete the examination before the first anniversary of the date the division makes the first examination available.

(g) The division may deny, revoke, or suspend a certification or reprimand a certified officer for a violation of this article or a rule of the Texas Board of Criminal Justice.

(h) If the division proposes to deny, [suspend or] revoke, or suspend an officer's certification under this article or reprimand a certified officer, the officer [person] is entitled to a hearing before the division or a hearings examiner appointed by the division. The division shall adopt procedures for appeals by certified officers of decisions made by the division to deny, revoke, or suspend a certification or to reprimand an

~~officer [by which decisions to suspend are made by or are appealable to the commission].~~

Sec. 8. TRAINING. The division may provide pre-service, in-service, and educational training and technical assistance to departments to promote compliance with the standards under this article and to assist departments in improving the operation of department services.

~~Sec. 9. [DATA AND REPORTS FOR STATE AID. The director of a department shall present data requested by the division as necessary to determine the amount of state financial aid to which the department is entitled. A department receiving state aid shall submit reports as required by the division.]~~

~~[Sec. 10.]~~ PUBLIC MEETING. (a) The division may not take an action under Sections 5(a)(1) through (6) ~~[(2) through (7)]~~ of this article relating to a community corrections facility established after August 31, 1989, unless a public meeting is held about the proposed action before the action is taken.

(b) Before the 30th day before the date of the meeting, the division, the department that the facility is to serve, or a vendor proposing to operate the facility shall:

(1) publish notice of the date, hour, place, and subject of the hearing required by Subsection (a) of this section in three consecutive issues of a newspaper of, or in newspapers that collectively have, general circulation in the county in which the proposed facility is to be located; and

(2) mail a copy of the notice to each city council member, county commissioner, state representative, and state senator who represents the area in which the proposed facility is to be located, unless the proposed facility has been previously authorized to operate at a particular location by a community justice council under Section 3, Article 42.131, of this code.

(c) If a private vendor, other than a private vendor that operates as a nonprofit corporation, proposes to operate a facility that is the subject of a public meeting under this section, the private vendor is responsible for the costs of providing notice and holding the public meeting required by this section.

(d) In describing the subject of a hearing for purposes of publishing notice under this section, the notice must specifically state the address of the facility on which a proposed action is to be taken and describe the proposed action.

(e) ~~The division, a department, or a private vendor shall hold a public meeting required by Subsection (a) of this section [in the county in which the facility on which a proposed action is to be taken is located,] at a site as close as practicable to the location at which the proposed action is to be taken [facility].~~

~~(f) A department, a county, a municipality, or a combination involving more than one of those entities may not take an action under Section 10, Article 42.131, of this code unless the community justice council serving the entity or entities holds a public meeting before the action is taken, with~~



notice provided and the hearing to be held in the same manner as provided by Subsections (a)-(e) of this section.

Sec. 10 ~~[44]~~. PAYMENT OF STATE AID. (a) If the division determines that a department complies with division standards and if the department or judges managing the department have submitted a community justice plan under Section 3, Article 42.131 of this code and the supporting information required by the division [this article] and the division determines the plan and supporting information are [is] acceptable, the division shall prepare and submit to the comptroller of public accounts vouchers for payment to the department as follows:

(1) for per capita funding, a per diem [an annual] amount as provided in the General Appropriations Act for each [full-time officer or each full-time equivalent employed by the department who supervises any combination of] felony defendant directly supervised by the department pursuant to lawful authority [probationers that results in a workload unit level that does not exceed 100, as determined under Subsection (c) of this section];

(2) for per capita funding, a per diem amount for a period not to exceed 182 days as provided in the General Appropriations Act for each defendant [misdemeanor probationer] supervised by the department pursuant to lawful authority, other than a felony defendant [misdemeanor probationer under supervision after the first anniversary of the date on which the probationer was placed on probation]; and

(3) for formula funding, an annual amount as computed by multiplying a [the] percentage based on the allocation formula established under Section 499.071, Government Code [of institutional admissions allocated to the county or counties served by the department under Article 6166a-4, Revised Statutes], times the total amount provided in the General Appropriations Act for payments under this subdivision.

(b) The division may use discretionary grant funds to further the purposes of this chapter by contracting for services with state agencies or nonprofit organizations. The division may also make discretionary grants to departments, municipalities, or counties for the following purposes:

(1) development and operation of pretrial and presentencing services;

(2) electronic monitoring services [programs], surveillance supervision [probation] programs, and controlled substances testing services [programs];

(3) research projects to evaluate the effectiveness of community corrections programs, if the research is conducted in cooperation with the Criminal Justice Policy Council;

(4) contract services for felony defendants [probationers];

(5) residential services for misdemeanor defendants [probationers] who exhibit levels of risk or needs indicating a need for confinement and treatment, as described by Section 4(b) of this article [Subsection (d) of this section];

(6) establishment or operation of county correctional centers under Subchapter H, Chapter 351, Local Government Code, or community corrections facilities for which the division has established standards under

Section 5 of this article[~~subject to payment methods established under Subsection (c) of this section~~]; and

(7) other purposes determined appropriate by the division and approved by the board.

(c) In addition to payments under Subsections (a) and (b) of this section and subject to the requirements of this subsection and Section 12 of this article, the division shall make quarterly county incentive payments to a county served by a department. The total amount that a county may earn in a state fiscal year under this section is to be determined by the division, based on an amount provided by the General Appropriations Act multiplied by the county's percentage of the total number of defendants added to community supervision under Article 42.12 of this code in the entire state during the preceding state fiscal year. The minimum amount that a county may receive during a state fiscal year under this subsection is \$10,000. The division shall require as a condition of making a payment under this subsection that the county provide the division with a plan, including a budget and program schedule, indicating the manner in which the payment is to be used for each purpose described by Subsection (d) of this section. The division may reject the plan, accept the plan, or make acceptance of the plan conditional on modification of the plan and monitoring of the plan by the division. [The division shall authorize payments under Subsection (a)(1) of this section only if the division determines that the department has made a reasonable effort to maintain workloads for supervising officers that do not exceed the following ratios:

[(1) one officer or full-time equivalent per 25 cases, with a workload unit value of 4 per case, for cases requiring intensive supervision;

[(2) one officer or full-time equivalent per 40 cases, with a workload unit value of 2.5 per case, for cases requiring maximum supervision;

[(3) one officer or full-time equivalent per 75 cases, with a workload unit value of 1.33 per case, for cases requiring a medium level of supervision; and

[(4) one officer or full-time equivalent per 100 cases, with a workload unit value of 1 per case, for cases requiring a minimum level of supervision.]

(d) A county that receives a payment under Subsection (c) of this section shall use not less than 25 percent of the payment for substance abuse prevention and treatment programs and may use the remainder for:

(1) implementation of the community justice plan for the department that serves the county; or

(2) any program serving the juvenile justice needs in the county. [The division annually shall evaluate its grant payments for facilities described by Section 5 of this article by applying risk assessment instruments developed by the division to determine whether persons confined exhibit levels of risk or needs that if not addressed through the confinement and treatment in a community corrections facility make it probable that the persons would pose unacceptable levels of threat to public safety through additional criminal behavior. The division shall

~~develop risk assessment instruments for use under this section not later than September 1, 1990:~~

~~[(c) The division may fund community corrections facilities for which standards have been established under Section 5 of this article:~~

~~[(1) on a grant basis;~~

~~[(2) on a per diem basis per person confined; or~~

~~[(3) by a combination of the grant and per diem basis.~~

~~[(f) The division may make payments under Subsection (c)(2) or (c)(3) of this section only from the residential services component of state aid established in the General Appropriations Act.]~~

~~(e) [(g)] Each department, county, or municipality shall deposit all state aid received from the division [under this article] in a special fund of the county treasury or municipal treasury, as appropriate, to be used, except as provided by Subsection (d)(2) of this section, solely for the provision of services, programs, and facilities under this article or Subchapter H, Chapter 351, Local Government Code.~~

~~(f) The division shall provide state aid to each department on a biennial basis, pursuant to the community justice plan for the biennium submitted by the department. A department with prior division approval may transfer funds from one program or function to another program or function.~~

Sec. 11 [12]. REFUSAL OR SUSPENSION OF STATE AID. (a) The division shall adjust grant funding for facilities on the basis of annual evaluations made by the division under Section 4(b) [11(d)] of this article.

(b) The division shall take one or more of the following actions against a department that the division determines is not in substantial compliance with division standards or requirements adopted under Sections 2-5 of this article:

(1) a reduction, refusal, or suspension of payment of state aid to the department; or

(2) an imposition of budget control over the department.

(c) The board shall provide for notice and a hearing in cases in which the division proposes to take an action authorized by this section. The division shall define with specificity the conduct that constitutes substantial noncompliance with division standards and shall establish the procedures to be used in imposing or waiving a sanction authorized by this section, subject to approval of the definition and the procedures by adoption by the board.

~~[Sec. 13. Pretrial Release Report. The Community Justice Assistance Division shall collect statistical information on the use of bail bonds, personal bonds and other types of pretrial release in each county of the state. The information shall be collected on an annual basis and analyzed to determine the utilization rate for each type of release method. The Division shall file a report of its findings with the Criminal Justice Division of the Governor's Office, the Lieutenant Governor, the Speaker of the House of Representatives, and the members of the Legislature not later than December 31 of each year.]~~

Sec. 12 [13]. Cooperation With Institutional Division [PERFORMANCE REWARDS]. [(a) The board shall develop, adopt, and

~~implement a performance rewards program to reward each county served by a department that successfully diverts offenders from confinement. In developing the program, the board shall consider relevant factors for each county served by a department. The factors shall include but are not limited to:~~

- ~~[(1) the personal bond utilization rate in the county;~~
- ~~[(2) the pretrial diversion rate in the county;~~
- ~~[(3) the deferred adjudication rate in the county;~~
- ~~[(4) the probation rate in the county;~~
- ~~[(5) the probation revocation rate in the county, with separate rates calculated for revocations based on technical grounds and revocations based on grounds other than technical;~~
- ~~[(6) the utilization rate of residential and nonresidential diversion programs in the county;~~
- ~~[(7) the institutional division commitment rate in the county;~~
- ~~[(8) the admission per index crimes rate in the county; and~~
- ~~[(9) the frequency with which and extent to which the county does not use all admissions to which the county is entitled under the allocation formula.~~

~~[(b) On January 1 of each year, the division shall make the first of four quarterly payments to a county served by a department, other than a county described by Subsection (d) of this section, on the basis of the performance record of the county during the previous state fiscal year in diverting offenders from confinement, as documented by information requested by the division and provided by the department serving the county. If a county qualifies for a reward under Subsection (a) of this section, the minimum amount that the county is entitled to receive during a state fiscal year is \$50,000. Each department shall provide the information for each county served by the department in a format designed by the division, and each county participating in the performance rewards program shall provide a plan, including a budget schedule, indicating to the division the manner in which the payment is to be used for each of the purposes described by Subsection (c) of this section. The division may reject the plan, accept the plan, or make acceptance of the plan conditional on modification of the plan and monitoring of the plan by the division.~~

~~[(c) A county that receives a payment under this section shall use not less than 25 percent of the payment for substance abuse prevention and treatment programs and may use the remainder of the payment for:~~

- ~~[(1) any purposes for which state aid may be used under Section 11(b) of this article;~~
- ~~[(2) implementation of the community justice plan for that county;~~

~~or~~

~~[(3) any program serving the criminal justice needs in the county, including certified programs for youthful offenders.~~

~~[(d)] The director of the institutional division shall notify the director of the community justice assistance division if a county fails to fully cooperate with employees of the institutional division who are evaluating inmates who are candidates for release on parole from the county jail. The director of the community justice assistance division may not make a~~

payment under Section 10(c) of this article [section] to the county described by this section [subsection]. For the purposes of this section [subsection], a county fails to fully cooperate with employees of the institutional division if the county does not:

(1) refer candidates for release on parole from jail in the manner required under guidelines established by the board;

(2) provide for each candidate a certified packet containing all documents the county would otherwise have been required to deliver to the director of the institutional division under Section 8, Article 42.09 of this code, plus three photographs and three thumbprint [fingerprint] cards taken in the manner provided by Article 38.33 of this code;

(3) hold candidates until the candidates are denied parole or released on parole, unless to do so would mean the county failed to use all admissions allocated to the county under Section 499.071, Government Code; or

(4) permit the employees access to inmates or inmate records or does not provide the employees with sufficient space to conduct their evaluations.

~~[(c) The community justice assistance division annually shall determine for each county whether the county has a successful personal bond utilization rate in the county and a successful pretrial diversion program. The division shall report its findings to the Legislative Criminal Justice Board not later than December 31 of each year.]~~

SECTION 2.02. Article 42.131, Code of Criminal Procedure, is amended to read as follows:

Art. 42.131. COMMUNITY SUPERVISION AND CORRECTIONS DEPARTMENTS

Sec. 1. DEFINITIONS. In this article:

(1) "Board" means the Texas Board of Criminal Justice.

(2) "Community supervision" has the meaning assigned by Section 2, Article 42.12, of this code.

(3) "Council" means a community justice council.

(4) ~~[(3)]~~ "Department" means a community supervision and corrections department established under this article.

(5) ~~[(4)]~~ "Division" means the community justice assistance division of the board.

Sec. 2. ESTABLISHMENT OF DEPARTMENTS. (a) The district judge or district judges trying criminal cases in each judicial district in the state shall establish a community supervision and corrections department and employ district personnel as may be necessary to conduct presentence investigations ~~[and risk assessments]~~, supervise and rehabilitate defendants placed on community supervision [probationers], enforce the ~~[terms and]~~ conditions of community supervision [probation], and staff community corrections facilities. Both the district judges trying criminal cases and the judges of statutory county courts trying criminal cases that are served by a community supervision and corrections department are entitled to participate in the management of the department.

(b) If two or more judicial districts serve a county, or a district includes more than one county, one department shall serve all courts and

counties in the district. However, the board may adopt rules to allow more than one department in a judicial district that includes more than one county if providing more than one department will promote administrative convenience or economy or improve services. The board may adopt rules allowing departments to contract with one another for services and facilities.

Sec. 3. ~~[Community Corrections Facilities;]~~ COMMUNITY JUSTICE COUNCIL. (a) ~~[Subject to Subsection (b) of this section, a department, county, municipality, or any combination involving more than one of those entities may establish community corrections facilities of the types described by Section 5, Article 42.13, of this code. A department, county, municipality, or combination involving more than one of those entities is specifically encouraged to purchase or enter into contracts for the use of abandoned or underutilized public facilities, such as rural hospitals, for the purpose of providing treatment facilities. The division may make grants to departments that use abandoned or underutilized facilities described by this subsection.]~~

~~[(b)]~~ A community justice council must be established by the district judge or judges in each jurisdiction served by a department, unless a board or council exists in the community on September 1, 1991, that performs duties substantially similar to those imposed on a community justice council under this section. The council shall provide continuing policy guidance and direction for the development of community ~~[criminal]~~ justice plans and community corrections facilities and programs. A council should consist of the following persons or their designees:

(1) a sheriff of a county to be served by the department, chosen by the sheriffs of the counties to be served by the department;

(2) a county commissioner or a county judge from a county to be served by the department, chosen by the county commissioners and county judges of the counties to be served by the department;

(3) a city council member of the most populous municipality in a county to be served by the department, chosen by the members of the city councils of cities to be served by the department;

(4) not more than two state legislators elected from a county to be served by the department, chosen by the state legislators elected from the counties to be served by the department;

(5) the presiding judge from a judicial district to be served by the department, chosen by the district judges from the judicial districts to be served by the department;

(6) a judge of a statutory county court exercising criminal jurisdiction in a county to be served by the department, to be chosen by the judges of statutory county courts with criminal jurisdiction in the counties to be served by the department;

(7) a county attorney with criminal jurisdiction from a county to be served by the department, chosen by the county attorneys with criminal jurisdiction from the counties to be served by the department;

(8) a district attorney or criminal district attorney from a judicial district to be served by the department, chosen by the district attorneys or

criminal district attorneys from the judicial districts to be served by the department; and

(9) an elected member of the board of trustees of an independent school district in a county to be served by the department, chosen by the members of the boards of trustees of independent school districts located in counties to be served by the department.

(b) ~~(c)~~ The community justice council shall appoint a community justice task force to provide support staff for the development of a community justice plan. The task force may consist of any number of members, but should include:

(1) the county or regional director of the Texas Department of Human Services with responsibility for the area to be served by the department;

(2) the chief of police of the most populous municipality to be served by the department;

(3) the chief juvenile probation officer of the juvenile probation office serving the most populous area to be served by the department;

(4) the superintendent of the most populous school district to be served by the department;

(5) the supervisor of the Department of Public Safety region closest to the department, or the supervisor's designee;

(6) the county or regional director of the Texas Department of Mental Health and Mental Retardation with responsibility for the area to be served by the department;

(7) a substance abuse treatment professional appointed by the Council of Governments serving the area to be served by the department;

(8) the department director ~~chief~~;

(9) the local or regional representative of the pardons and paroles division of the Texas Department of Criminal Justice ~~Board of Pardons and Paroles Division~~ with responsibility for the area to be served by the department;

(10) the representative of the Texas Employment Commission with responsibility for the area to be served by the department;

(11) the representative of the Texas Rehabilitation Commission with responsibility for the area to be served by the department;

(12) a licensed attorney who practices in the area to be served by the department and whose practice consists primarily of criminal law;

(13) a court administrator, if one serves the area to be served by the department;

(14) a representative of a community service organization that provides adult treatment, educational, or vocational services to the area to be served by the department; and

(15) a representative of an organization in the area to be served by the department that is actively involved in issues relating to defendants' rights, chosen by the county commissioners and county judges of the counties to be served by the department.

Sec. 4. DEPARTMENT DIRECTOR. The district judge or judges shall appoint a department director who must meet, at a minimum, the eligibility requirements for officers established under Section 5 of this article. The

department director shall employ a sufficient number of officers and other employees to perform the professional and clerical work of the department.

Sec. 5. STANDARDS FOR OFFICERS. (a) Officers appointed by the department director must comply with a code of ethics developed by the division.

(b) To be eligible for appointment on or after September 1, 1989, [the effective date of this Act] as an officer who supervises defendants placed on community supervision [probationers] a person:

(1) must have acquired a bachelor's degree conferred by an institution of higher education accredited by an accrediting organization recognized by the Texas Higher Education Coordinating Board; and

(2) unless the bachelor's degree is in criminology, corrections, counseling, law, social work, psychology, sociology, or a related field that has been approved by the division, must have:

(A) one year of graduate study in one of those fields; or

(B) one year of experience in full-time casework, counseling, or community or group work that has been approved by the division.

(c) A person employed as a peace officer is not eligible for appointment as an officer under this section.

(d) The division may establish a waiver procedure for departments unable to hire persons meeting the requirements under Subsection (b)(2) of this section.

Sec. 6. EMPLOYEES; BENEFITS. (a) Except as provided by Subsection (c) of this section, department employees are not state employees. The department shall contract with the most populous county served by the department for insurance and retirement plans, and the employees are governed by personnel policies and benefits equal to or more favorable to employees than [the same] personnel policies for and benefits of other [as the] employees of that county.

(b) The judicial districts served by a department shall pay the salaries of department employees.

(c) Department employees are state employees for the purposes of Chapter 104, Civil Practice and Remedies Code, and Article 8309g, Revised Statutes. A department is a governmental unit for the purposes of Section 101.103(a), Civil Practice and Remedies Code.

(d) The department shall provide transportation or automobile allowances for officers who supervise probationers.

Sec. 7. Public Funds [State Aid], GRANTS, GIFTS. A department may accept public funds [state aid] and grants and gifts from any source for the purpose of financing programs and facilities. A municipality, county, or other political subdivision may make grants to a department for those purposes.

Sec. 8. COUNTIES' FINANCIAL RESPONSIBILITIES. (a) The county or counties served by a department shall provide physical facilities, equipment, and utilities for a department. The division shall monitor the support a county provides under this section and determine whether a county provides support that meets the standards for minimum support established by the division. If the division determines that a county's



support is insufficient, the division may impose on the department a sanction authorized by Section ~~11~~ ~~[12]~~, Article 42.13, of this code.

(b) If a department serves two or more counties, those counties may enter into an agreement for the distribution of the expenses of facilities, equipment, and utilities.

Sec. 9. DISTRICT'S FINANCIAL RESPONSIBILITIES. (a) The district judge or judges may expend district funds in order to provide expanded facilities, equipment, and utilities if:

(1) the department needs to increase its personnel in order to provide more effective services or to meet workload requirements established under Article 42.13 of this code;

(2) the county or counties certify to the judge or judges that they have neither adequate space in county-owned buildings nor adequate funds to lease additional physical facilities, purchase additional equipment, or pay for additional utilities required by the department; and

(3) the county or counties provide facilities, equipment, and utilities at or above the levels required by the division.

(b) The division shall set as the level of contribution a county or counties must meet or exceed to receive district funds under Subsection (a) of this section a level not lower than the average level provided by the county or counties during the fiscal year in which the funds are to be received and the four fiscal years immediately preceding that year [~~fiscal years of 1983-87~~].

Sec. 10. STATE FUNDS OR GUARANTEES FOR CORRECTIONS FACILITIES. (a) In this section:

(1) "Community corrections facility" has the meaning assigned by Section 1(b), Article 42.13, of this code.

(2) "State jail felony facility" means a facility operated or contracted for by the state jail division under Subchapter A, Chapter 507, Government Code.

(b) A department, county, municipality, or a combination involving more than one of those entities may establish a community corrections facility and are specifically encouraged to purchase or enter into a contract for the use of abandoned or underutilized public facilities, such as former military bases and rural hospitals, for the purpose of providing community corrections facilities.

(c) The district judge or judges may authorize expenditures of funds provided by the division to the department for the purposes of providing facilities, equipment, and utilities for community corrections facilities or state jail felony facilities if:

(1) the community justice council recommends the expenditures; and

(2) the division, or the state jail division in the case of a state jail felony facility, provides funds for the purpose of assisting in the establishment or improvement of the facilities.

(d) A judicial district may acquire, hold title to, and own real property for the purpose of establishing a community corrections facility or a state jail felony facility.

(e) A department, county, municipality, or a combination involving more than one of those entities may not use a facility or real property purchased, acquired, or improved with state funds unless the division, or the state jail division in the case of a state jail felony facility, first approves the use.

(f) The division or the state jail division, in the case of a state jail felony facility, is entitled to reimbursement from an entity described by Subsection (e) of this section of all state funds used by the entity without division approval as required by Subsection (e).

Sec. 11. ADDITIONAL [PRETRIAL] SERVICES. (a) The department may operate programs for the supervision and rehabilitation of persons in deferred prosecution programs, pretrial intervention programs, pretrial bonding programs, and programs providing supervised release for persons on conditional bond. [Programs may include testing for controlled substances.] Persons in [pretrial intervention] programs described by this subsection may be supervised and made subject to the conditions under Section 11, Article 42.12, of this code for a period not to exceed one year, except as otherwise provided by law.

(b) The department may use money deposited in the special fund of the county treasury for the department under Article 103.004(b) of this code only for the same purposes for which state aid may be used under this article.

(c) This section does not apply to a person charged with an offense under Sections 49.04-49.08, Penal Code.

Sec. 12. COLLECTION SERVICE; MISCELLANEOUS FEES. (a) A department may collect money from an individual as ordered by a court served by the department regardless of whether the individual is under the department's supervision.

(b) A department that collects money under this section shall promptly transfer the money collected to the appropriate county or state officer.

(c) A department may assess a reasonable administrative fee on an individual who participates in a department program or receives department services and who is not paying a monthly fee under Section 19, Article 42.12, of this code.

Sec. 13. RESTITUTION. (a) If a judge requires a defendant to make restitution to a victim of the defendant's offense, and a payment is received under this article from the defendant for transmittal to a victim of the offense, the community supervision and corrections department that receives the payment for disbursement to the victim shall immediately deposit the payment in an interest-bearing account in the department having original jurisdiction. The department shall transmit the payment to the victim as soon as practicable.

(b) If a victim cannot be located, immediately after receiving a final payment in satisfaction of an order of restitution for the victim the department shall attempt to notify the victim of that fact by certified mail, mailed to the last known address of the victim. If a victim then makes a claim for payment, the department promptly shall remit the payment to the victim. Not earlier than the fifth anniversary of the date on which the department mails notice under this subsection, if the victim has not made

a claim for payment, the department shall transfer the payment from the interest-bearing account to the comptroller of public accounts, after deducting five percent of the payment as a collection fee and deducting any interest accrued on the payment. The comptroller shall deposit the payment in the state treasury to the credit of the compensation to victims of crime auxiliary fund.

(c) The collection fee under Subsection (b) of this section and the accrued interest under Subsections (a) and (b) of this section shall be deposited in the special fund of the county treasury provided by Section 10, Article 42.13, of this code to be used for the same purposes for which state aid may be used under that section. The department has a maximum of 121 days after the four-year expiration date to transfer the funds to the comptroller's office. Failure to comply with the 121-day deadline will result in a five percent collection fee penalty calculated from the total deposit and all interest attributable to the unclaimed funds.

(d) If the victim of the offense claims the payment during the four-year period in which the payment is held in the interest-bearing account, the department shall pay the victim the amount of the original payment, less any interest earned while holding the payment. After the payment has been transferred to the comptroller, the department has no liability in regard to the payment, and any claim for the payment must be made to the comptroller. If the victim makes a claim to the comptroller, the comptroller shall pay the victim the amount of the original payment, less the collection fee, from the compensation to victims of crime auxiliary fund.

Sec. 14. PROGRAM TO ASSESS AND ENHANCE DEFENDANT'S EDUCATIONAL AND VOCATIONAL SKILLS. (a) A department, with the assistance of public school districts, community and public junior colleges, public and private institutions of higher education, and other appropriate public and private entities, may establish a developmental program for a defendant under the supervision of the department on the basis of information obtained in the presentence investigation report prepared for the defendant.

(b) The developmental program may provide the defendant with the educational and vocational training necessary to:

(1) meet the average skill level of students who have completed the sixth grade in public schools in this state; and

(2) maintain employment while under the supervision of the department, to lessen the likelihood that the defendant will commit additional offenses.

(c) To decrease expenditures by community supervision and corrections departments for the educational and vocational skills assessment and enhancement program established under this section, the Texas Department of Commerce shall provide information to departments, public school districts, community and public junior colleges, public and private institutions of higher education, and other appropriate public and private entities for obtaining financial assistance through the Texas Job-Training Partnership Act (Article 4413(52), Vernon's Texas Civil Statutes) and other applicable programs of public or private entities.

SECTION 2.03. (a) Section 493.003(b), Government Code, is amended to read as follows:

(b) The chief justice of the Supreme Court of Texas and the presiding judge of the Texas Court of Criminal Appeals shall each appoint six members to serve as the judicial advisory council to the community justice assistance division and the board. The advisory council members serve staggered six-year terms, with the terms of four of the members expiring February 1 of each odd-numbered year. In the event of a vacancy during a term, the appointing authority for the member who vacated the office shall appoint a replacement to fill the unexpired portion of the term [at the will of the appointing judge]. The advisory council shall advise the director of the community justice assistance division and the board on matters of interest to the judiciary, and the director and the board shall carefully consider the advice. Members of the advisory council are not entitled to compensation but are entitled to reimbursement for actual and necessary expenses in the conduct of their duties, as provided by the General Appropriations Act.

(b) The change in the terms of the members of the judicial advisory council to the community justice assistance division of the Texas Department of Criminal Justice and the Texas Board of Criminal Justice, as required by the amendment to Section 493.003(b), Government Code, made by Subsection (a) of this section, shall occur in the manner provided by this subsection. The chief justice of the Supreme Court of Texas and the presiding judge of the Texas Court of Criminal Appeals shall appoint the initial members of the six-year term advisory council on or before January 1, 1994, and on the date of appointment the terms of the members serving at-will terms expire. Of the members, the chief justice and the presiding judge each shall appoint four to serve terms expiring February 1, 1995, four to serve terms expiring September 1, 1997, and four to serve terms expiring September 1, 1999. On expiration of those terms, the term of a member is six years, as provided by Section 493.003(b).

SECTION 2.04. (a) Article 102.012, Code of Criminal Procedure, is amended to read as follows:

Art. 102.012. FEES FOR PRETRIAL ~~[INTERVENTION]~~ PROGRAMS. A person in a pretrial intervention program, deferred prosecution program, pretrial bonding program, or program providing supervised release for persons on conditional bond established under Section 11, Article 42.131 of this code, may be assessed a fee that equals the actual cost to a community supervision and corrections department, not to exceed \$500, for supervision of the defendant by the department or programs provided to the defendant by the department as part of the pretrial intervention program.

(b) The change in law made by Subsection (a) of this section to Article 102.012, Code of Criminal Procedure, applies only to a fee imposed for a service provided on or after the effective date of this article.

SECTION 2.05. Subchapter C, Chapter 102, Code of Criminal Procedure, is amended by adding Article 102.072 to read as follows:

Art. 102.072. ADMINISTRATIVE FEE. An officer listed in Article 103.003 or a community supervision and corrections department may assess an administrative fee for each transaction or administrative action taken by

the officer or department relating to the collection of money or the discharge of a sentence by a method other than the payment of money. The fee may not exceed \$2 for each transaction or administrative action.

SECTION 2.06. Article 103.003, Code of Criminal Procedure, is amended to read as follows:

Art. 103.003. COLLECTION. District and county attorneys, clerks of district and county courts, sheriffs, constables, ~~and~~ justices of the peace, and community supervision and corrections departments may collect money payable under this title and as otherwise provided by law.

SECTION 2.07. This article takes effect September 1, 1993.

### ARTICLE 3

SECTION 3.01. Section 493.009, Government Code, is amended to read as follows:

Sec. 493.009. SUBSTANCE ABUSE FELONY PUNISHMENT FACILITIES. (a) The department, ~~[through the community justice assistance division and the pardons and paroles division and]~~ with the cooperation of the Texas Commission on Alcohol and Drug Abuse, shall establish a program to confine and treat defendants required to participate in the program under Section 14, Article 42.12, Code of Criminal Procedure ~~[punished under Section 12.422, Penal Code].~~

(b) The board shall adopt criteria to determine the suitability of candidates for participation in the program. The department and the Texas Commission on Alcohol and Drug Abuse shall jointly develop methods of screening and assessing defendants required to participate in the program under Section 14, Article 42.12, Code of Criminal Procedure ~~[inmates sentenced under Section 12.422, Penal Code]~~, to determine their need for specific types of treatment for alcohol or drug abuse problems.

(c) The program for persons required to participate in the program under Section 14, Article 42.12, Code of Criminal Procedure ~~[sentenced under Section 12.422, Penal Code]~~, must consist of treatment programs that may vary in time from six months to 12 months. The department shall also establish and provide treatment programs for persons in categories described by Subsections (g)(1)-(3) who are housed in beds otherwise provided for persons required to participate in the program under Section 14, Article 42.12, Code of Criminal Procedure ~~[sentenced under Section 12.422, Penal Code].~~

(d) The program for persons required to participate in the program under Section 14, Article 42.12, Code of Criminal Procedure ~~[sentenced under Section 12.422, Penal Code]~~, provided under this section must contain highly structured work, education, and treatment schedules, a clearly delineated authority structure, and well-defined goals and guidelines. The department shall establish a graded system of rewards and sanctions for defendants ~~[inmates]~~ who participate in the program, but a defendant required to participate in the program under Section 14, Article 42.12, Code of Criminal Procedure ~~[sentenced under Section 12.422, Penal Code]~~, is not entitled to earn awards of time for good conduct. A qualified professional, at least every 60 days, must perform an evaluation on a defendant~~[, other than a defendant whose underlying offense is an offense under Article 67011-1, Revised Statutes,]~~ that determines the

defendant's treatment progress and institutional behavior. ~~[The professional must perform the evaluation on a defendant whose underlying offense is an offense under Article 67011-1, Revised Statutes, at least every 28 days.]~~ Not later than three days after the date on which a four-month evaluation is performed, ~~[or in the case of a defendant whose underlying offense is an offense under Article 67011-1, Revised Statutes, three days after the date on which a 28-day evaluation is performed;]~~ the qualified professional shall establish a tentative release date for the defendant, notify the sentencing court of that fact, and include with the notice a copy of the four-month ~~[or 28-day]~~ evaluation~~[-as appropriate]~~. The qualified professional immediately shall notify the court if the professional determines the defendant's conduct requires a revision of the tentative release date.

(e) The department shall contract through the Texas Commission on Alcohol and Drug Abuse with ~~[nonprofit]~~ organizations to provide qualified professionals to implement the program for persons required to participate in the program under Section 14, Article 42.12, Code of Criminal Procedure ~~[sentenced under Section 12.422, Penal Code]~~. For purposes of this subsection, a "qualified professional" is a person who:

- (1) is a certified alcohol and drug abuse counselor;
- (2) is a certified social worker or advanced clinical practitioner and who has at least two years of experience in chemical dependency counseling; or
- (3) is a licensed professional counselor, physician, or psychologist and who has at least two years of experience in chemical dependency counseling.

~~(f)(1)~~ The department shall adopt rules of conduct ~~[for inmates participating in the program]~~ for persons required to participate in the program under Section 14, Article 42.12, Code of Criminal Procedure, or required to participate in the program following modification of probation or parole ~~[sentenced under Section 12.422, Penal Code]~~.

~~(2)~~ If the qualified professional with primary responsibility for treating a defendant and the individual in charge of security in the facility in which the defendant is housed jointly determine that the defendant is not complying with the rules or is medically or psychologically unsuitable for the program, they shall notify the department of that fact.

~~(3)~~ The department, immediately on receiving notice, shall request the sentencing court to reassume custody of the defendant if the defendant was required to participate in the program under Section 14, Article 42.12, Code of Criminal Procedure, or required to participate in the program following modification of probation. The court shall reassume custody before the 12th day after the date on which the department notifies the court. If the court revokes the defendant's probation, the admission of the defendant to the institutional division is an admission for which the county from which the defendant was sentenced is charged under the allocation formula established under Section 499.071.

~~(4)~~ The department, immediately on receiving notice, shall request the pardons and paroles division to reassume custody of the defendant if the defendant was required to participate in the program following

modification of parole. The pardons and paroles division shall immediately take action in accordance with established policies and procedures of the Board of Pardons and Paroles to remove the defendant from the program. If a parole panel revokes the defendant's parole, the admission of the defendant to the institutional division is an admission for which the county from which the defendant was sentenced is charged under the allocation formula established under Section 499.071.

(5) If the defendant was transferred to the facility from a county jail under Subsection (1), the department shall return the defendant to the county jail.

(6) A court's recommendation that a defendant be placed in a program created under this section does not give the court the power to hold the department or any officer or employee of the department in contempt of court for failure to adhere to that recommendation.

(g) The department shall provide 12,000 beds for the purpose of operating the program for persons required to participate in the program under Section 14, Article 42.12, Code of Criminal Procedure [sentenced under Section 12.422, Penal Code], except that the beds may also be used to house the following categories of persons:

(1) persons transferred under Subchapter A, Chapter 499, Government Code, and Section 8(i), Article 42.18, Code of Criminal Procedure;

(2) persons whose probation or parole has been modified ~~or revoked~~; and

(3) ~~defendants~~ ~~inmates~~ confined in county jails awaiting transfer to the institutional division.

(h) On and after the date persons are required under Section 14, Article 42.12, Code of Criminal Procedure [sentenced under Section 12.422, Penal Code], to participate in the program established under this section, the department shall give priority to housing those persons over the categories of persons described by Subsections (g)(1)-(3).

(i) The department shall make quarterly reports to the Legislative Criminal Justice Board that show the ratio of persons in beds reserved under Subsection (g) who have been required to participate in the program under Section 14, Article 42.12, Code of Criminal Procedure [sentenced under Section 12.422, Penal Code], to persons in those beds who have been sent to the facilities by other methods.

(j) The department shall recover from a program participant the cost to the department of providing treatment, to the extent the participant has insurance that covers the treatment or is otherwise able to pay for the treatment.

(k) It is the intent of the legislature that facilities established under this section be used primarily to house persons required to participate in the program under Section 14, Article 42.12, Code of Criminal Procedure [sentenced under Section 12.422, Penal Code], except that if treatment beds are empty, this subsection does not prohibit the department from using those empty beds to treat the categories of persons listed in Subsection (g).

(l) The department shall identify ~~defendants~~ ~~inmates~~ confined in county jails who are awaiting transfer to the institutional division and who

because of their need for treatment of drug or alcohol problems require transfer to a substance abuse felony punishment facility. The department shall provide for the transportation of the defendant ~~[may order the county to transfer an inmate]~~ to such a facility. If the board finds that a county has failed to fully cooperate with the department in evaluating defendants ~~[and transferring inmates]~~ under this section, the board shall notify the Commission on Jail Standards of that fact. On notice from the board, the commission may reduce or suspend payments under Subchapter F, Chapter 499, or may suspend the certification of the county jail as provided by Section 511.012.

(m) Notwithstanding any other provision of this section, the department is authorized to provide substance abuse felony punishment facilities, not to exceed 500 beds, for newly provided alcohol and drug abuse beds exclusively for persons whose probation or parole has been modified ~~[or revoked]~~.

(n) The department shall separate participants in the program created under this section from inmates of the institutional division, except at times determined necessary by the department for the purpose of transportation or staging or for medical or security reasons.

(o) If a defendant required to participate in the program under Section 14, Article 42.12, Code of Criminal Procedure, is released after successful completion of the program, the Texas Commission on Alcohol and Drug Abuse shall contract for transportation of the participant at the expense of the commission to an appropriate continuum of care program.

(p) To the extent funds are available, the Criminal Justice Policy Council, with the assistance of the Texas Commission on Alcohol and Drug Abuse and the department, shall develop methods to evaluate the processes used by the department in providing the program and the level of success achieved by the program.

SECTION 3.02. Section 501.0931, Government Code, is amended by amending Subsections (c), (d), (g), (h), and (j), and by adding Subsection (k) to read as follows:

(c) The program must consist of a ~~[three-month and a six-month]~~ treatment program of indeterminate length, not to exceed 12 months. The institutional division shall make a referral of an inmate to a program based on the severity of the substance abuse problem, eligibility of the inmate, and the availability of treatment space. An inmate who has not more than 12 ~~[six]~~ months remaining in the inmate's sentence before the earliest date the inmate is eligible for parole is eligible for the ~~[three-month]~~ program. ~~[An inmate who has not more than one year remaining in the inmate's sentence before the earliest date the inmate is eligible for parole is eligible for the six-month program.]~~

(d) The institutional division shall separate inmates ~~[who participate in the three-month program from inmates who participate in the six-month program and shall separate inmates]~~ participating in the program from the general population of the division and house the inmates in discrete units or areas within units, except during the diagnostic process or at other times determined to be necessary by the division for medical or security purposes. The institutional division shall separate an inmate who



successfully completes the program from the general population of the division during any period after completion and before the inmate is discharged or released on parole or mandatory supervision from the department.

(g) The institutional division shall adopt;

(1) a procedure for determining which eligible inmates are the best candidates for participation in the program, with priority for those eligible inmates who volunteer; and

(2) rules of conduct for inmates participating in the program.

(h) If the qualified professional implementing the program ~~[institutional division]~~ determines that an inmate is not complying with the rules of the program, the qualified professional shall notify the institutional division of that fact and the institutional division shall ~~[may]~~ end the inmate's participation in the program and transfer the inmate out of the program.

(j) Neither the institutional division nor a qualified professional implementing the program may operate the program in a manner that automatically excludes inmates who do not volunteer to participate, and the division and the treatment provider shall attempt to encourage nonvolunteer inmates to participate ~~[The department shall require an inmate who participates in a treatment program to participate in a drug or alcohol abuse after-care program as a condition of parole after the inmate is released from the institutional division].~~

(k) If funding is available, the Criminal Justice Policy Council, with the assistance of the institutional division, shall develop methods to evaluate the processes used by the division in providing the program and the level of success achieved by the program.

SECTION 3.03. Section 8, Article 42.18, Code of Criminal Procedure, is amended by amending Subsection (g) and adding Subsection (g-1) to read as follows:

(g) The Texas Board of Criminal Justice may adopt such other reasonable rules not inconsistent with law as it may deem proper or necessary with respect to the eligibility of prisoners for parole and mandatory supervision, the conduct of parole and mandatory supervision hearings, or conditions to be imposed upon parolees and persons released to mandatory supervision. Each person to be released on parole shall be furnished a contract setting forth in clear and intelligible language the conditions and rules of parole. The parole panel may include as a condition of parole or mandatory supervision any condition that a court may impose on a probationer under Article 42.12 of this code, including the condition that the person released submit to testing for controlled substances or submit to electronic monitoring if the parole panel determines that absent testing for controlled substances or participation in an electronic monitoring program the person would not be released on parole. Acceptance, signing, and execution of the contract by the inmate to be paroled shall be a precondition to release on parole. Persons released on mandatory supervision shall be furnished a written statement setting forth in clear and intelligible language the conditions and rules of mandatory supervision. The parole panel may also require as a condition

of parole or release to mandatory supervision that the person make payments in satisfaction of damages the person is liable for under Article 6184p, Revised Statutes. The parole panel shall require as a condition of parole or mandatory supervision that the person register under Article 6252-13c.1, Revised Statutes. The parole panel shall require as a condition of parole or mandatory supervision that an inmate who immediately before release is a participant in the program established under Section 501.0931, Government Code, participate in a drug or alcohol abuse continuum of care treatment plan.

(g-1) The Texas Commission on Alcohol and Drug Abuse shall develop the continuum of care treatment plan.

SECTION 3.04. This article takes effect September 1, 1993.

#### ARTICLE 4

SECTION 4.01. Section 499.0021(b), Government Code, is amended to read as follows:

(b) The pardons and paroles division may assume custody of an inmate who is eligible for transfer under this section not earlier than one year before the inmate's presumptive parole date. The inmate becomes a pre-parolee on the date the pardons and paroles division assumes custody, and the pardons and paroles division immediately shall transfer the pre-parolee to a facility under contract with the division, which may be a community residential facility, a community corrections facility listed in Section 10, Article 42.131 [~~6(b), Article 42.13~~], Code of Criminal Procedure, or a county correctional facility. A pre-parolee transferred under this section is considered to be in the actual physical custody of the pardons and paroles division.

SECTION 4.02. Section 499.003(d), Government Code, is amended to read as follows:

(d) The pardons and paroles division may request of a sheriff that the sheriff forward to the pardons and paroles division copies of any records possessed by the sheriff that are relevant to the pardons and paroles division in its determination as to whether to transfer a person from the county jail to a secure community residential facility, and the pardons and paroles division shall request the sheriff to forward to the institutional division and to the pardons and paroles division the information relating to the defendant the sheriff would be required under Section 8, Article 42.09, Code of Criminal Procedure, to deliver to the institutional division had the defendant been transferred to the institutional division. The pardons and paroles division shall determine whether the information forwarded by the sheriff contains a thumbprint taken [~~fingerprint~~] from the person in the manner provided by Article 38.33, Code of Criminal Procedure, and, if not, the pardons and paroles division shall obtain a thumbprint in the manner provided by that article [~~10-finger print from the person, either by use of the ink-rolled print method or by use of a live-scanning device that prints the fingerprint on paper~~], and shall forward the thumbprint [~~10-finger print~~] to the institutional division for inclusion with the information sent by the sheriff. The sheriff shall comply with a request from the pardons and paroles division made under this subsection.

SECTION 4.03. The section heading of Section 499.052, Government Code, is amended to read as follows:

Sec. 499.052. STATE BOOT CAMP ~~[ALTERNATIVE INCARCERATION]~~ PROGRAM ~~[For Probationers]~~.

SECTION 4.04. The subchapter heading of Subchapter D, Chapter 499, Government Code, is amended to read as follows:

SUBCHAPTER D. ALLOCATION FORMULAS ~~[FORMULA]~~

SECTION 4.05. Section 499.071, Government Code, is amended to read as follows:

Sec. 499.071. ALLOCATION FORMULA. (a) The board shall ~~[develop]~~ adopt~~;~~ and enforce an allocation formula that fairly and equitably allocates to each county ~~[or group of counties served by a community corrections and supervision department]~~ the number of institutional division admissions allocated to the county ~~[or counties]~~ until sufficient capacity is available in the institutional division. In devising the formula, the board shall consider relevant factors for each county ~~[or group of counties]~~ served by a department and shall assign weights to those factors as determined appropriate by the board. The factors shall include but are not limited to:

(1) the percentage of prison admissions for the entire state that were used by the county ~~[or counties]~~ in the preceding 12 months;

(2) the percentage of the state's violent index crime that occurred in the county ~~[or counties]~~ in the preceding 12 months;

(3) the percentage of the state's total index crime that occurred in the county ~~[or counties]~~ in the preceding 12 months;

(4) the percentage of the state's total arrests under Chapter 481, Health and Safety Code, that occurred in the county ~~[or counties]~~ in the preceding 12 months;

(5) the percentage of the state's population residing in the county ~~[or counties]~~;

(6) the percentage of the state's total unemployment in the county ~~[or counties]~~; and

(7) the percentage of all defendants serving sentences for felonies who were paroled from the institutional division, a jail in this state, a federal correctional institution, or a jail or correctional institution in another state in the preceding 12 months and who were released to reside in the county ~~[or counties]~~.

(b) The board shall adopt and enforce an allocation formula that fairly and equitably allocates community corrections program funding to each community supervision and corrections department in the manner provided by Section 10(a)(3), Article 42.13, Code of Criminal Procedure. In devising the formula, the board shall use the factors listed in Subsection (a), but may assign different weights to those factors than those used in developing the admissions allocation formula. The board also may use factors not listed in Subsection (a) in devising the formula under this subsection.

(c) If the board is unable to obtain for a factor listed in Subsection (a) information for the preceding 12-month period, the board shall consider the most recent information available for that factor.

(d) ~~(c)~~ The board shall revise each ~~(the)~~ formula annually.

SECTION 4.06. Section 495.021 (a), Chapter 495, Subchapter B, Government Code is amended to read as follows:

Sec. 495.021 (a) The Board may contract with the Commissioner's Court of a county, a home-rule city, or a non-profit corporation acting on behalf of a home-rule city or county to use, lease purchase, purchase on an installment contract, or acquire in any other manner a ~~[secure correctional]~~ criminal justice facility financed and constructed under the authority of the county, home-rule city or non-profit corporation acting on behalf of a home-rule city or county. The contract must be subject to specific appropriative authority in the General Appropriations Act. ~~[—and the facility must be managed by the institutional division.]~~

SECTION 4.07. Section 5 (a), Article 601d-1, Vernon's Texas Civil Statutes is amended to read as follows:

Section 5 (a) The Authority may issue revenue bonds and distribute bond proceeds to appropriate agencies for use for acquiring, constructing, or equipping new facilities or for major repair or renovation of existing facilities, corrections institutions including facilities authorized by Section 495.001 (a), Government Code, facilities authorized by Section 495.021 (a), Government Code, criminal justice facilities for the Texas Department of Criminal Justice, including youth corrections institutions, and mental health and mental retardation institutions. The proceeds may be used to refinance an existing obligation for a purpose described by this subsection.

SECTION 4.08. Section 493.012, Government Code, is amended to read as follows:

Sec. 493.012. HISTORICALLY UNDERUTILIZED ~~[DISADVANTAGED]~~ BUSINESSES. (a) The board and the department each shall make a good faith effort to assist historically underutilized ~~[disadvantaged]~~ businesses to receive at least 30 ~~[20]~~ percent of the total value of:

(1) each construction contract awarded for construction, purchase of supplies, materials, services, and equipment that the board and the department expect to make; and

(2) contracts awarded for operation, maintenance, or management ~~[in connection with construction funded by the issuance of bonds]~~.

(b) The board and the department each shall annually report to the legislature and the governor on the level of historically underutilized ~~[disadvantaged]~~ business participation in board and department contracts. The report shall include:

(1) names and locations of the historically underutilized businesses participating in contracts;

(2) types of services conducted by the historically underutilized businesses participating in contracts;

(3) a description of the type of recruitment strategy used to attract historically underutilized businesses; and

(4) recommendations for the improvement of historically underutilized ~~[disadvantaged]~~ business opportunities with the board and the department.

(c) In this section, "historically underutilized business" means:

(1) a business entity formed for the purpose of making a profit of which at least 51 percent is owned by one or more persons who are socially disadvantaged because of their identification as members of certain groups, including women, African Americans, Hispanic Americans, Native Americans, and Asian Americans, who have suffered the effects of discriminatory practices or similar insidious circumstances over which they have no control; or

(2) a corporation formed for the purpose of making a profit in which at least 51 percent of all classes of the shares of stock or other equitable securities is owned by one or more persons described by Subdivision (1). Those persons must have proportionate interest in the control, operation, and management of the corporation's affairs. [“disadvantaged business” has the meaning assigned by Section 1.02, State Purchasing and General Services Act (Article 601b, Vernon’s Texas Civil Statutes).]

SECTION 4.09. Chapter 494, Government Code, is amended by adding Section 494.011 to read as follows:

Sec. 494.011. SEAL OF INSTITUTIONAL DIVISION. (a) The institutional division shall use an official seal to certify documents received by the director under Sections 8(a) and (c), Article 42.09, Code of Criminal Procedure.

(b) The official seal must contain an engraved, five-pointed star in the center with the words “Texas Department of Criminal Justice—Institutional Division” around the margin.

SECTION 4.10. This article takes effect September 1, 1993.

#### ARTICLE 5

“SECTION 5.01. Article 42.18, Code of Criminal Procedure, is amended by adding Section 8A to read as follows:

Sec. 8A. (a) In addition to other conditions imposed by a parole panel under this article, the panel shall require as a condition of parole or release to mandatory supervision that the defendant reside during the period of parole or mandatory supervision in the county in which:

(1) the defendant resided at the time of committing the offense for which the defendant was sentenced to the institutional division; or

(2) the defendant committed the offense for which the defendant was sentenced to the institutional division, but only if the defendant was not a resident of this state at the time of committing the offense.

(b) A parole panel may require a defendant to reside in a county other than the county required by Subsection (a) of this section to:

(1) protect the life or safety of a victim of the defendant’s offense, the defendant, a witness in the case, or any other person; or

(2) increase the likelihood of the defendant’s successful completion of parole or mandatory supervision, because of:

(A) written expressions of significant public concern in the county in which the defendant would otherwise be required to reside;

(B) the presence of family members or friends in the other county who have expressed a willingness to assist the defendant in successfully completing the terms and conditions of the defendant’s release on parole or mandatory supervision;

(C) the verified existence of a job offer in the other county; or

(D) the availability of treatment programs, educational programs, or other social service programs in the other county that are not available in the county in which the defendant would otherwise be required to reside.

(c) At any time after a defendant is released on parole or mandatory supervision, a parole panel may modify the conditions of parole or release on mandatory supervision to require the defendant to reside in a county other than the county required by the original conditions. In making a decision under this subsection, a parole panel must consider the factors listed in Subsection (b) of this section.

(d) If a parole panel initially requires the defendant to reside in a county other than the county required by Subsection (a) of this article, the parole panel shall subsequently require the person to reside in the county described by Subsection (a) of this article if the requirement that the defendant reside in the other county was based on:

(1) the verified existence of a job offer under Subsection (b)(2)(C) of this article and the defendant is no longer employed in or actively seeking employment; or

(2) the availability of treatment programs, educational programs, or other social service programs under Subsection (b)(2)(D) of this article and the defendant:

(A) no longer regularly participates in the program as required by a term or condition of parole or release to mandatory supervision; or

(B) has successfully completed the program but has violated another term or condition of the defendant's release on parole or mandatory supervision.

(e) If a parole panel requires the defendant to reside in a county other than the county required by Subsection (a) of this section, the panel shall state the reason for its decision in writing, and place the statement in the defendant's permanent record.

(f) This section does not apply to a decision by a parole panel to require a defendant to serve the period of parole or mandatory supervision in another state.

SECTION 5.02. Chapter 413, Government Code, is amended by adding Section 413.019 to read as follows:

Sec. 413.019. REPORT ON INMATE RELEASE STATISTICS. (a) Not later than the fifth day of each month, the policy council shall determine the following information relating to inmates for the preceding month:

(1) the number and percentage of inmates released on parole or to mandatory supervision to each county;

(2) the number and percentage of inmates released on parole in absentia to each county; and

(3) the number of inmates released to and from a halfway house in each county, including the number of inmates who are required as a

condition of release to reside in a county other than the county in which a halfway house is located.

(b) The policy council shall submit to the Texas Board of Criminal Justice an annual report that includes the following information for the preceding 12 months:

(1) the number of inmates released on parole or to mandatory supervision;

(2) the number and percentage of inmates released on parole or to mandatory supervision to each county, including the number of inmates who are required on release from a halfway house to reside in a county other than the county in which the halfway house is located;

(3) the number of inmates released on parole in absentia;

(4) the number and destination of inmates who are transferred from one county to another during the period of release or supervision; and

(5) the number and percentage of inmates released on parole in absentia to each county.

(c) The report required under this section must also include the number of persons under the supervision or custody of the Texas Department of Criminal Justice at the end of a fiscal year, including the type and status of the supervision or custody.

(d) The pardons and paroles division of the Texas Department of Criminal Justice shall review the information in the annual report to enable the division to make an appropriate and equitable distribution of inmates to each county.

SECTION 5.03. The Criminal Justice Policy Council shall make its first annual report as required by Section 413.019, Government Code, as added by this Act, not later than January 1, 1994.

SECTION 5.04. This Act takes effect September 1, 1993."

#### ARTICLE 6

SECTION 6.01. Sections 413.009, 413.012, 413.015, 413.017, and 413.018, Chapter 413, Government Code, are amended to read as follows:

Sec. 413.009. DUTIES OF POLICY COUNCIL. To accomplish its duties the policy council shall:

(1) conduct an in-depth analysis of the criminal justice system;

(2) determine the long-range needs of the criminal justice system and recommend policy priorities for the system;

(3) identify critical problems in the criminal justice system and recommend strategies to solve those problems;

(4) assess the cost-effectiveness of the use of state and local funds in the criminal justice system;

(5) ~~recommend the goals, priorities, and standards for the allocation of criminal justice planning funds administered by the criminal justice division;~~

~~[(6)]~~ recommend means to improve the deterrent and rehabilitative capabilities of the criminal justice system;

(6) ~~[(7)]~~ advise and assist the legislature in developing plans, programs, and proposed legislation for improving the effectiveness of the criminal justice system;

(7) ~~(8)~~ make computations of daily costs and compare interagency costs on services provided by agencies that are a part of the criminal justice system;

(8) ~~(9)~~ make population computations for use in planning for the long-range needs of the criminal justice system;

(9) ~~(10)~~ determine long-range information needs of the criminal justice system and acquire that information; and

(10) ~~(11)~~ engage in other activities consistent with the responsibilities of the policy council~~[-and~~

~~(12) implement the criminal justice data report].~~

Sec. 413.012. CONTRACTUAL AUTHORITY. ~~[(a)]~~ The policy council may contract with public or private entities in the performance of its responsibilities.

~~[(b) The policy council may contract with the criminal justice center at Sam Houston State University to provide information important to the work of either council.]~~

Sec. 413.015. CRIMINAL JUSTICE PLAN; BIENNIAL ~~[ANNUAL]~~ REPORT. (a) The policy council biennially ~~[annually]~~ shall submit to the legislature a plan detailing the actions necessary to promote an effective and cohesive criminal justice system.

(b) The policy council shall include in the plan a report of its activities and the recommendations it makes under Section 413.009.

~~[Sec. 413.017. SPECIAL PROJECTS. (a) Before January 1, 1991, the policy council shall prepare and report to the legislature:~~

~~[(1) a design for conducting a comprehensive study of sentencing patterns and practices in this state;~~

~~[(2) an evaluation of formulas for the fair and equitable allocation of prison beds to local jurisdictions;~~

~~[(3) a study that develops uniform definitions of the term "recidivism" and "revocation rate"; and~~

~~[(4) an examination of the reporting requirements imposed by the state on municipal, county, and district clerk offices and justices of the peace offices that relate to criminal justice system processing, with recommendations relating to the consolidation, simplification, or elimination of requirements where appropriate.~~

~~[(b) The design prepared under Subsection (a)(1) must include:~~

~~[(1) a statement of the specific objectives of the comprehensive study;~~

~~[(2) methodology;~~

~~[(3) schedules for the study;~~

~~[(4) a description of the resources necessary for the study; and~~

~~[(5) two pilot sampling programs, capable of testing the design.~~

~~[(c) Before January 1, 1993, the policy council shall prepare a study on and report to the legislature about statewide sentencing dynamics. The report must include a detailed profile of felons sentenced to the institutional division and felons placed on probation. The policy council shall design the study to provide the legislature with information necessary to perform a proper revision of the Penal Code and statutes relating to sentencing in criminal cases.~~



~~[Sec. 413.018. CRIMINAL JUSTICE DATA REPORT. (a) Not later than September 1, 1992, the policy council shall prepare for and distribute to each district court in this state with felony jurisdiction a data collection report form.~~

~~[(b) The policy council shall design the data collection report form to collect all information relevant to a sentence in a felony case or to a pretrial diversion or grant of deferred adjudication in a felony case as well as any other information determined necessary by the policy council.~~

~~[(c) The attorney representing the state shall complete the data collection report for each felony conviction in which the defendant is sentenced to the institutional division of the Texas Department of Criminal Justice and shall include a copy of the data collection report in the documents sent to the division under Article 42.09, Code of Criminal Procedure. In any disposition of a felony case that does not include confinement in the institutional division, the attorney representing the state shall send a copy of the report to the community supervision and corrections department serving the court.~~

~~[(d) If a sentence in a criminal case is imposed pursuant to a plea bargain, the attorney representing the state shall include that information in the data collection report.]~~

SECTION 6.02. This article takes effect September 1, 1993.

#### ARTICLE 7

SECTION 7.01. Article 26.051, Code of Criminal Procedure, is amended by adding Subsections (g) and (h) to read as follows:

(g) The court shall appoint an attorney other than an attorney provided by the board if the court determines for any the following reasons that a conflict of interest could arise from the use of an attorney provided by the board under Subsection (e) of this article:

(1) the case involves more than one inmate and the representation of more than one inmate could impair the attorney's effectiveness;

(2) the case is appealed and the court is satisfied that conflict of interest would prevent the presentation of a good faith allegation of ineffective assistance of counsel by a trial attorney provided by the board;  
or

(3) any conflict of interest exists under the Disciplinary Rules of Professional Conduct of the State Bar that precludes representation by an attorney appointed by the board.

(h) When the court appoints an attorney other than an attorney provided by the board, the county shall pay from its general fund the first \$250.00 of the aggregate sum allowed and awarded by the court for the attorney's fees under Article 26.05 of this code. If the fees awarded for a court-appointed attorney in a case described by this subsection exceed \$250.00, the court shall certify the amount in excess of \$250.00 to the board. On request of the board, the comptroller shall issue a warrant to the court-appointed attorney in the amount certified to the board by the court.

SECTION 7.02. Article 26.051(f), Code of Criminal Procedure, is repealed.

SECTION 7.03. This article takes effect September 1, 1993.

ARTICLE 8

SECTION 8.01. In addition to other amounts appropriated for the fiscal biennium ending August 31, 1995, the sum of \$72,000,000 is appropriated from the economic stabilization fund to the Texas Department of Criminal Justice for:

- (1) the operation of additional capacity; and
- (2) increased supervision for probation.

ARTICLE 9

SECTION 9.01. Notwithstanding any provision of this Act establishing an effective date for an article of this Act, this Act takes effect only if S.B. 1067, Acts of the 73rd Legislature, Regular Session, 1993, takes effect. If S.B. 1067 does not take effect, this Act has no effect.

SECTION 9.02. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Amendment No. 1

Amend C.S.S.B. 532 by adding an appropriately numbered article to read as follows and by renumbering the existing articles accordingly:

ARTICLE \_\_\_\_

SECTION \_\_.01. Chapter 30, Civil Practice and Remedies Code, is amended by adding Section 30.007 to read as follows:

Sec. 30.007. INMATE CIVIL ACTION. (a) In a civil action in which an inmate of the institutional division of the Texas Department of Criminal Justice is a party, a trial court may conduct a proceeding relating to the action:

- (1) at the prison unit in which the inmate is confined;
- (2) in the county in which that prison unit is located; or
- (3) in the county in which more than one witness to the proceeding resides or works.

(b) The court may sign or enter any order relating to a proceeding conducted as authorized by this section.

(c) This section applies without regard to whether the court is located in a judicial district that is composed of more than one county.

SECTION \_\_.02. This article applies to any proceeding in a civil action taking place on or after September 1, 1993, without regard to whether the action commenced before, on, or after that date.

Amendment No. 2

Amend C.S.S.B. 532 as follows:

- (1) On page 9, strike lines 4-8 and substitute the following:

Sec. 507.005. IMPLEMENTATION. (a) The board shall provide for the financing, construction, operation, maintenance, and management of the state jail felony facilities for which funds are appropriated under the General Appropriations Act or any other Act of the 73rd Legislature.

Regular Session, 1993, in two phases that may be implemented simultaneously.

(2) On page 10, amend lines 23 and 24 by striking the complete sentence and substituting the following:

The board, not later than November 1, 1993, shall adopt timetables for the implementation of phase one and phase two.

**Floor Amendment No. 3**

In C.S.S.B. 532 on page 5, line 1, change "18" to "12".

**Floor Amendment No. 4**

Amend C.S.S.B. 532 as follows:

(1) On page 70 between lines 23 and 24, insert the following new Section 4.08 to read as follows and renumber the following sections appropriately:

SECTION 4.08. Section 5.13(d), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) ~~[Sections 5.16, 5.17, 5.21, and 5.25 of this article apply to construction projects undertaken by or for the institutional division of the Texas Department of Criminal Justice.]~~ No ~~[other]~~ provisions of this article apply to construction projects undertaken by or for the ~~[institutional division of the]~~ Texas Department of Criminal Justice."

**Amendment No. 5**

Amend C.S.S.B. 532 by adding the following appropriately numbered article and renumbering subsequent articles accordingly:

ARTICLE \_\_\_\_\_

SECTION \_\_.01. Section 21, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), is amended by adding Subsection (j) to read as follows:

(j) This Act does not apply to a rule or internal procedure of the Texas Department of Criminal Justice or Texas Board of Criminal Justice that applies to an inmate or any other person under the custody or control of the department, or to an action taken under that rule or procedure.

SECTION \_\_.02. Chapter 493, Government Code, is amended by adding Section 493.013 to read as follows:

Sec. 493.013. APPLICABILITY OF CERTAIN GRIEVANCE PROCEDURES. A grievance procedure of the department or a division of the department, including the procedure established under Section 501.008, applies to a grievance of an inmate or other person under the custody or control of the department relating to a rule or internal procedure of the board or department.

SECTION \_\_.03. This article takes effect September 1, 1993.

**Amendment No. 6**

Amend C.S.S.B. 532 in Article 2 of the bill by adding a new section to read as follows and by renumbering the existing sections in Article 2 accordingly:

SECTION 2.\_\_\_\_. (a) Subsections (a) and (d), Article 102.011, Code of Criminal Procedure, are amended to read as follows:

(a) A defendant convicted of a ~~felony or a~~ misdemeanor shall pay the following fees for services performed in the case by a peace officer:

(1) \$5 for issuing a written notice to appear in court following the defendant's violation of a traffic law, municipal ordinance, or penal law of this state, or for making an arrest without a warrant;

(2) \$35 for executing or processing an issued arrest warrant or *capias*, with the fee imposed for the services of:

(A) the law enforcement agency that executed the arrest warrant or *capias*, if the agency requests of the court, not later than the 15th day after the date of the execution of the arrest warrant or *capias*, the imposition of the fee on conviction; or

(B) the law enforcement agency that processed the arrest warrant or *capias*, if the executing law enforcement agency failed to request the fee within the period required by Paragraph (A) of this subdivision;

(3) \$5 for summoning a witness;

(4) \$35 for serving a writ not otherwise listed in this article;

(5) \$10 for taking and approving a bond and, if necessary, returning the bond to the courthouse;

(6) \$5 for commitment or release;

(7) \$5 for summoning a jury, if a jury is summoned; and

(8) \$8 for each day's attendance of a prisoner in a habeas corpus case if the prisoner has been remanded to custody or held to bail.

(d) A defendant shall pay for the services of a sheriff or constable who serves process and attends an examining trial in a ~~felony or a~~ misdemeanor case the same fees allowed for those services in the trial of a ~~felony or a~~ misdemeanor, not to exceed \$5.

(b) The change in law made by Subsection (a) of this section to Article 102.011, Code of Criminal Procedure, applies only to a service performed in a felony case on or after the effective date of this article.

#### Amendment No. 7

Amend C.S.S.B. 532 as follows:

(1) Add the following article to the bill, appropriately numbered, and renumber existing articles of the bill accordingly:

#### ARTICLE \_\_\_\_

SECTION \_\_.01. Sections 7(c), (d), (e), and (f), Article 42.18, Code of Criminal Procedure, are amended to read as follows:

(c) The ~~board [Texas Board of Criminal Justice]~~ shall develop and implement a policy that clearly defines circumstances under which a board member should disqualify himself from voting on a parole decision or on a decision to revoke parole or mandatory supervision.

(d) The ~~board [Texas Board of Criminal Justice]~~ may provide and promulgate a written plan for the administrative review by the entire membership or a subset of the entire membership of the board of actions taken by a parole panel.

(e) In matters of parole, release to mandatory supervision, and revocation of parole or mandatory supervision, the board members shall act in panels comprised of three persons in each panel. The composition of the respective panels shall be designated by the chairman of the board. A majority of each panel shall constitute a quorum for the transaction of its business, and its decisions shall be by majority vote. The actions of the panels are not subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and its subsequent amendments. The members of a panel are not required to meet as a body to perform the member's duties as prescribed by this article, except to conduct a hearing as provided by Section 14 of this article.

(f) The members of the board shall meet at least once in each quarter of the calendar year at a site determined by the chairman. Deliberations and actions of the board to make clemency decisions are not subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and its subsequent amendments. The members of the board are not required to meet as a body to perform the member's duties in clemency matters [for the purpose of making clemency decisions. As a specific exception to Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), the board, at the call of the chair, may hold a hearing on clemency matters by telephone conference call. The portion of a meeting that is public shall be recorded and the recording made available to the public to be heard at one or more places designated by the board].

SECTION \_\_.02. Sections 8(a), (e), (f), and (h), Article 42.18, Code of Criminal Procedure, are amended to read as follows:

(a) A parole panel is authorized to release on parole any person confined in any penal or correctional institution who is eligible for parole under this section. A parole panel may consider a person for release on parole if the person has been sentenced to a term of imprisonment in the institutional division, is confined in a jail in this state, a federal correctional institution, or a jail or a correctional institution in another state, and is eligible for parole. A parole panel may release a person on parole during the [tentative] parole month established for the person if the panel determines that the person's release will not increase the likelihood of harm to the public [or that the person has not failed to progress in the manner required by the panel in Subsection (c) of this section]. The institutional division shall [may] provide the board [pardons and paroles division] with sentence time credit information on persons described in this subsection. Good [and the pardons and paroles division may develop its own sentence time credit information on persons described by this subsection, but in either event, good] time credit shall be calculated for a person as if the person were confined in the institutional division during the entire time the person was actually confined. The period of parole shall be equivalent to the maximum term for which the prisoner was sentenced less calendar time actually served on the sentence. Every prisoner while on parole shall remain in the legal custody of the pardons

and paroles division and shall be amenable to conditions of supervision ordered by a parole panel under this article. All paroles shall issue upon order of a parole panel.

(e) Not later than the 120th day after the date on which a prisoner is admitted to the institutional division, the Texas Department of Criminal Justice ~~[pardons and paroles division]~~ shall secure all pertinent information relating to the prisoner, including but not limited to the court judgment, any sentencing report, the circumstances of the prisoner's offense, the prisoner's previous social history and criminal record, the prisoner's physical and mental health record, a record of the prisoner's conduct, employment history, and attitude in prison, and any written comments or information provided by local trial officials or victims of the offense. ~~The Texas Department of Criminal Justice~~ [Except as otherwise provided by this subsection, within the 120-day period, the pardons and paroles division] shall establish ~~[a tentative parole month for the prisoner based on information gathered under this subsection and]~~ a proposed program of measurable institutional progress that must be submitted to the board at the time of the board's consideration of the inmate's case for release. The board shall conduct an initial review of an eligible inmate not later than the 180th day after the date of the inmate's admission to the institutional division. Before the inmate is approved for release to parole by the board, the inmate must agree to participate in the programs and activities described by the proposed program of measurable institutional progress in which the pardons and paroles division determines the prisoner must agree to participate and meet the requirements before being released on parole. ~~The pardons and paroles division is not required to establish a tentative parole month and program of progress if the pardons and paroles division determines that to do so would be inappropriate in the prisoner's case and indicates that determination in the prisoner's file. The pardons and paroles division shall notify the institutional division of each prisoner's tentative parole month and proposed program of measurable institutional progress. Within 30 days of receipt of notice from the pardons and paroles division, the institutional division shall advise the pardons and paroles division if any of the proposed programs of measurable institutional progress or the requirements of those programs cannot be achieved within the prisoner's unit of incarceration. The tentative parole month may not be a date that is earlier than the prisoner's initial parole eligibility date, as calculated or projected under Subsection (b) of this section. The pardons and paroles division may revise a tentative parole month established under this subsection at any time the pardons and paroles division determines is proper].~~ The institutional division shall work closely with the board ~~[pardons and paroles division]~~ to monitor the progress of the inmate ~~[inmates]~~ in the institutional division and shall report the progress to the board before the inmate's release.

(f)(1) In this subsection: (A) "close relative of a deceased victim" means a person who was the spouse of a deceased victim at the time of the victim's death, a parent of the deceased victim, or an adult brother, sister, or child of the deceased victim; (B) "guardian of a victim" means a person who is the legal guardian of a victim, whether or not the legal

relationship between the guardian and victim exists because of the age of the victim or the physical or mental incompetency of the victim; and (C) "victim" means a person who is a victim of sexual assault, kidnapping, or aggravated robbery or who has suffered bodily injury or death as the result of the criminal conduct of another.

(2) Before a parole panel considers for parole a prisoner who is serving a sentence for an offense in which a person was a victim, the pardons and paroles division, using the name and address provided on the victim impact statement, shall make a reasonable effort to notify a victim of the prisoner's crime or if the victim has a legal guardian or is deceased, to notify the legal guardian or close relative of the deceased victim. If the notice is sent to a guardian or close relative of a deceased victim, the notice must contain a request by the pardons and paroles division that the guardian or relative inform other persons having an interest in the matter that the prisoner is being considered for parole. If a hearing is held, the parole panel shall allow a victim, guardian of a victim, close relative of a deceased victim, or a representative of a victim or his guardian or close relative to provide a written statement. This subsection may not be construed to limit the number of persons who may provide statements for or against the release of the prisoner on parole. The parole panel shall consider the statements and the information provided in a victim impact statement in determining whether or not to recommend parole. However, the failure of the pardons and paroles division to comply with notice requirements of this subsection is not a ground for revocation of parole.

(3) If a victim, guardian of a victim, or close relative of a deceased victim would be entitled to notification of parole consideration by the pardons and paroles division but for failure by that person to provide a victim impact statement containing the person's name and address, the person is nonetheless entitled to receive notice if the person files with the pardons and paroles division a written request for that notification. After receiving such a written request, the pardons and paroles division shall grant to the person all the privileges to which the person would be entitled had the person submitted a victim impact statement. Before a prisoner is released from the institutional division on parole or on the release of a prisoner on mandatory supervision, the pardons and paroles division shall give notice of the release to any person entitled to notification of parole consideration for the prisoner because the person filed with the pardons and paroles division a victim impact statement or a request for notification of a parole consideration.

(4) Except as necessary to comply with this section, the board [pardons and paroles division] or the Texas Department of Criminal Justice [institutional division] may not disclose to any person the name or address of a victim or other person entitled to notice under this section unless the victim or that person approves the disclosure or the board [pardons and paroles division] or the department is ordered to disclose the information by a court of competent jurisdiction after the court determines that there is good cause for disclosure.

(5) Before ordering the parole of any prisoner, a parole panel may have the prisoner appear before it and interview him. A parole shall be

ordered only for the best interest of society, not as an award of clemency; it shall not be considered to be a reduction of sentence or pardon. The ~~board~~ [pardons and paroles division] shall develop and implement [standard] parole guidelines that shall be the basic criteria on which parole decisions are made. The parole guidelines shall be developed according to an acceptable research method and shall be based on the seriousness of the offense and the likelihood of favorable parole outcome. The ~~board~~ [pardons and paroles division] shall review the parole guidelines periodically and make any revisions considered necessary by virtue of statistical analysis of board actions using acceptable research methodology. A prisoner shall be placed on parole only when arrangements have been made for his employment or for his maintenance and care and when the parole panel believes that he is able and willing to fulfill the obligations of a law-abiding citizen. Every prisoner while on parole shall remain in the legal custody of the pardons and paroles division and shall be amenable to the conditions of supervision ordered under this article.

(h) It shall be the duty of the ~~pardons and paroles division~~ [board] at least 10 days before ~~the board orders~~ [ordering] the parole of any prisoner or at least 10 days after recommending the granting of executive clemency by the governor to notify the sheriff, the prosecuting attorney, and the district judge in the county where such person was convicted and the county to which the prisoner is released that such parole or clemency is being considered by the board or by the governor. For any case in which there was a change of venue, the ~~pardons and paroles division~~ [board] shall notify those same officials in the county in which the prosecution was originated if, no later than 30 days after the date on which the defendant was sentenced, those officials request in writing that the ~~pardons and paroles division~~ [board] give them notice under this section of any future release of the prisoner. Additionally, no later than the 10th day after the parole panel orders the transfer of a prisoner to a halfway house under this article, the ~~pardons and paroles division~~ [parole panel] shall notify the sheriff of the county in which the prisoner was convicted and shall notify the sheriff of the county in which the halfway house is located and the attorney who represents the state in the prosecution of felonies in that county. The notice must state the prisoner's name, the county in which the prisoner was convicted, and the offense for which the prisoner was convicted.

SECTION \_\_.03. Section 9, Article 42.18, Code of Criminal Procedure, is amended to read as follows:

Sec. 9. DUTY TO PROVIDE INFORMATION, COMPUTERS, AND OFFICES. (a) It shall be the duty of any judge, district attorney, county attorney, police officer, or other public official of the state having information with reference to any prisoner eligible for parole to send in writing such information as may be in his possession or under his control to the pardons and paroles division, upon request of any member of the Board of Pardons and Paroles or employee of the ~~board or the~~ pardons and paroles division.

(b) The Texas Department of Criminal Justice may, by interagency contract, provide to the board necessary computer equipment and computer



access to all computerized records and physical access to all hard copy records in the custody of the department that are related to the duties and functions of the board.

(c) The Texas Department of Criminal Justice may, by interagency contract, provide to the board necessary and appropriate office space in the locations designated by the chairman of the board and utilities and communication equipment.

SECTION \_\_.04. Section 10, Article 42.18, Code of Criminal Procedure, is amended to read as follows:

Sec. 10. ACCESS TO PRISONERS. It shall be the duty of the institutional division to grant to the members of the board and employees of the board and the pardons and paroles division access at all reasonable times to any prisoner, to provide for the members and employees or such representatives facilities for communicating with and observing such prisoner, and to furnish to the members and employees such reports as the members and employees shall require concerning the conduct and character of any prisoner in their custody and any other facts deemed by a parole panel pertinent in determining whether such prisoner shall be paroled.

SECTION \_\_.05. Section 11, Article 42.18, Code of Criminal Procedure, is amended to read as follows:

Sec. 11. INFORMATION AND ARGUMENTS. (a) The board [~~Texas Board of Criminal Justice~~] shall adopt rules as to the submission and presentation of information and arguments to parole panels [~~and the pardons and paroles division~~] for and in behalf of any person within the jurisdiction of a panel [~~or the division~~].

(b) All persons presenting information or arguments to a panel or the division shall submit therewith an affidavit as required by law or board rule stating whether any fee has been paid or is to be paid for their services in the case, the amount of such fee, if any, and by whom such fee is paid or to be paid.

SECTION \_\_.06. Section 13(a), Article 42.18, Code of Criminal Procedure, is amended to read as follows:

(a) A warrant for the return of a paroled prisoner, a prisoner released to mandatory supervision, a prisoner released although not eligible for release, a resident released to a preparole or work [~~furlough~~] program, a prisoner released on emergency reprieve or on furlough, or a person released on a conditional pardon to the institution from which the person [~~he~~] was paroled, released, or pardoned may be issued by the director or a designated agent of the director [~~members of parole panels~~] in cases of parole or mandatory supervision, or by the board on order by the governor in other cases, if [~~when~~] there is reason to believe that the person [~~he~~] has been released although not eligible for release or arrested for an offense, if there is a verified complaint stating that the person violated a rule or condition of release, or if there is reliable evidence that the person has exhibited behavior during the person's release that indicates to a reasonable person that the person poses a danger to society that warrants the person's immediate return to custody. The person may be held in custody pending a determination of all facts surrounding the alleged offense, violation of a rule or condition of release, or dangerous behavior. A designated agent

~~of the director acts independently from a parole officer and must receive specialized training as determined by the director~~~~[committed an offense against the laws of this state or of the United States, violated a condition of his parole, mandatory supervision, or conditional pardon, or when the circumstances indicate that he poses a danger to society that warrants his immediate return to incarceration]~~. Such warrant shall authorize all officers named therein to take actual custody of the prisoner and detain and house the prisoner until a parole panel ~~[the pardons and paroles division]~~ orders the return of the prisoner to the institution from which he was released. Pending hearing, as hereinafter provided, upon any charge of parole violation, ineligible release, or violation of the conditions of mandatory supervision, a prisoner returned to custody shall remain incarcerated. If ~~the director, a board member, or a designated agent of the director or the board~~ a parole panel is otherwise authorized to issue a warrant under this subsection, the pardons and paroles division may instead issue to a prisoner a summons requiring the prisoner to appear for a modification determination with the pardons and paroles division ~~[hearing under Section 14 of this article]~~. The summons must state the time, place, date, and purpose of the modification determination ~~[hearing]~~.

SECTION \_\_.07. Section 14, Article 42.18, Code of Criminal Procedure, is amended to read as follows:

Sec. 14. HEARINGS; SANCTIONS. (a) Whenever a prisoner or a person granted a conditional pardon is accused of a violation of his parole, mandatory supervision, or conditional pardon, on information and complaint by a law enforcement officer or parole officer, or is arrested after an ineligible release, he shall be entitled to be heard on such charges before a parole panel or a designee of the board ~~[division]~~ under such rules as the board ~~[Texas Board of Criminal Justice]~~ may adopt; provided, however, said hearing ~~[shall be a public hearing and]~~ shall be held within 70 days of the date of arrest under a warrant issued by the director or a designated agent of the director ~~[a parole panel]~~ or by the board on order by the governor and at a time and place set by that parole panel or designee. The panel or designee may hold the hearing at a date later than the date otherwise required by this section if it determines a delay is necessary to assure due process for the person. If a parole panel or designee determines that a parolee, mandatory supervisee, or person granted a conditional pardon has been convicted in a court of competent jurisdiction of a felony offense committed while an administrative releasee and has been sentenced by the court to a term of incarceration in a penal institution, the determination is to be considered a sufficient hearing to revoke the parole or mandatory supervision or recommend to the governor revocation of a conditional pardon without further hearing, except that the parole panel or designee shall conduct a hearing to consider mitigating circumstances if requested by the parolee, mandatory supervisee, or person granted a conditional pardon. When the parole panel or designee has heard the facts, the board ~~[it]~~ may recommend to the governor that the conditional pardon be continued, revoked, or modified, or it may continue, revoke, or modify the parole or mandatory supervision, in any manner warranted by the evidence. ~~[The Texas Board of Criminal Justice shall~~

~~develop and implement a system of sanctions that may be imposed by the pardons and paroles division on a person whose conditional pardon or release on parole or mandatory supervision is continued or modified. The parole panel or designee must make its recommendation or decision no later than the 30th day after the date the hearing is concluded.]~~ When a person's parole, mandatory supervision, or conditional pardon is revoked, that person may be required to serve the portion remaining of the sentence on which he was released, such portion remaining to be calculated without credit for the time from the date of his release to the date of revocation. When a warrant is issued charging a violation of release conditions, the sentence time credit may be suspended until a determination is made in such case and such suspended time credit may be reinstated should such parole, mandatory supervision, or conditional pardon be continued.

(b) The board ~~[pardons and paroles division]~~ shall develop and implement a training program for employees ~~[designees]~~ of the board ~~[division]~~ who conduct hearings under this section. The training program must assist the employees ~~[designees]~~ in understanding issues relating to the revocation process.

SECTION \_\_.08. Sections 15(b) and (c), Article 42.18, Code of Criminal Procedure, are amended to read as follows:

(b) The pardons and paroles division ~~[A parole panel]~~ may allow a person released on parole or mandatory supervision to serve the remainder of the person's sentence without supervision and without being required to report if:

(1) the person has been under the supervision for not less than one-half of the time that remained on the person's sentence when the person was released from imprisonment and during the period of supervision the person's parole or release on mandatory supervision has not been revoked; and

(2) the pardons and paroles division ~~[parole panel]~~ determines that:

(A) the person has made a good faith effort to comply with any restitution order imposed on the person by a court of competent jurisdiction; and

(B) allowing the person to serve the remainder of the person's sentence without supervision and reporting is in the best interest of society.

(c) The pardons and paroles division ~~[A parole panel]~~ may require a person released from supervision and reporting under Subsection (b) of this section to resubmit to supervision and resume reporting at any time, and for any reason.

SECTION \_\_.09. Section 17, Article 42.18, Code of Criminal Procedure, is amended by adding Subsections (c) and (d) to read as follows:

(c) The pardons and paroles division may modify the conditions of parole or mandatory supervision previously imposed on a person only if the person poses an immediate threat to public safety. A parole panel must approve a modification of conditions of parole or mandatory supervision at the earliest possible time.

(d) At any time before setting a revocation hearing date under Section 14(a) of this article, the pardons and paroles division may withdraw a warrant and continue supervision of a released person.

SECTION \_\_.10. Section 24, Article 42.18, Code of Criminal Procedure, is amended to read as follows:

Sec. 24. INTENSIVE SUPERVISION. The pardons and paroles division shall establish a program to provide intensive supervision to inmates released under the provisions of Subchapter B, Chapter 498, Government Code, and other inmates determined by parole panels or the pardons and paroles division to require intensive supervision. The Texas Board of Criminal Justice shall adopt rules that establish standards for determining which inmates require intensive supervision. The program must provide the highest level of supervision provided by the pardons and paroles division.

SECTION \_\_.11. Section 25(g), Article 42.18, Code of Criminal Procedure, is amended to read as follows:

(g) The pardons and paroles division may enter into a contract with a public or private vendor for the financing, construction, operation, or management of community-based facilities using lease-purchase or installment sale contracts to provide or supplement housing, board, or supervision for persons placed in community-based facilities. A person housed or supervised in a facility operated by a vendor under a contract is subject to the same provisions of law as if the housing or supervision were provided directly by the pardons and paroles division.

SECTION \_\_.12. Not later than September 1, 1994, the Board of Pardons and Paroles shall determine the appropriate qualifications of hearings officers designated to conduct hearings under Section 14, Article 42.18, Code of Criminal Procedure, as amended by this article. The board shall submit a report of the qualifications to the Legislative Budget Board and the governor's office for approval. Any new qualifications are effective not later than September 1, 1995.

SECTION \_\_.13. This article takes effect September 1, 1993.

(2) In Article 3, Section 3.03 of the bill, in the first sentence of Section 8(g), Article 42.12, Code of Criminal Procedure (page 65, line 4, House Committee Report), strike "Texas Board of Criminal Justice" and substitute "board [Texas Board of Criminal Justice]".

#### **Amendment No. 8**

Amend C.S.S.B. 532 in Article 5 by adding a new appropriately numbered section to read as follows and by renumbering the existing sections as appropriate:

SECTION 5.\_\_\_\_. (a) Section 8, Article 42.18, Code of Criminal Procedure, is amended by adding Subsection (o) to read as follows:

(o) The institutional division shall immediately transport to a halfway house a prisoner who has been assigned to the halfway house under Subsection (i) of this section. The institutional division may contract with a public or private entity, including another division of the Texas Department of Criminal Justice, for the transportation of prisoners under this subsection.

(b) The change in law made by this section applies only to a person who is assigned to a halfway house by the pardons and paroles division of the Texas Department of Criminal Justice on or after the effective date of this section. A person who is assigned to a halfway house before the effective date of this section is covered by the law in effect on the date the person was assigned, and the former law is continued in effect for that purpose.

**Amendment No. 9**

Amend C.S.S.B. 532 as follows:

(1) In Article 2, Section 2.02, Article 42.131, Code of Criminal Procedure, amended Section 3 (on page 45, between lines 19 and 20, House Committee Report), insert the following new Subsection (c):

(c) The pardons and paroles division of the Texas Department of Criminal Justice, on or before January 1 and July 1 of each year, shall provide to each council the following information concerning each halfway house located in the area the council serves:

(1) whether the halfway house receives money from the division or any other state agency and, if so, the amount of money received in the preceding six months; and

(2) the name and business address of the owner of the halfway house.

(2) In Article 2, add the following new section, appropriately numbered, to read as follows and renumber subsequent sections accordingly:

SECTION \_\_\_\_\_. The pardons and paroles division of the Texas Department of Criminal Justice shall make the first report to community justice councils, as required by Section 3(c), Article 42.131, Code of Criminal Procedure, as added by this Act, not later than January 1, 1994.

**Amendment No. 10**

Amend C.S.S.B. 532 by adding an appropriately numbered article to read as follows and by renumbering the existing articles of the bill accordingly:

ARTICLE \_\_\_\_\_

SECTION \_\_\_\_\_.01. Article 42.18, Code of Criminal Procedure, is amended by adding Section 4A to read as follows:

Sec. 4A. PROHIBITED REPRESENTATION. (a) A person serving as a member of the board or the Texas Board of Criminal Justice may not, for a period of six years after the date the person ceases to be a board member, directly or indirectly represent any person in a matter before the Board of Pardons and Paroles or a panel of the board or receive compensation for services rendered on behalf of any person regarding a matter pending before the board or a panel of the board.

(b) A person, other than a person subject to Subsection (a) of this section, who is employed by the Texas Department of Criminal Justice may not, for a period of six years after the date the person terminates service with the department, represent any person in a matter before a panel of the board or the board or receive compensation for services rendered on behalf

of any person regarding a matter pending before a panel of the board or the board.

(c) A former member of the board or the Texas Board of Criminal Justice or a former employee of the Texas Department of Criminal Justice may not represent any person or receive compensation for services rendered on behalf of any person regarding a matter pending before the Board of Pardons and Paroles or a panel of the board with which the former member or employee was directly concerned during the period of membership or employment, either through personal involvement or because the matter was within the member's or employee's official responsibility while associated with the board, the Texas Board of Criminal Justice, or the department.

(d) A former member of the board or the Texas Board of Criminal Justice or employee of the Texas Department of Criminal Justice commits an offense if the former member or employee violates this section. An offense under this subsection is a Class A misdemeanor.

SECTION \_\_\_\_ .02. Section 7, Article 42.18, Code of Criminal Procedure, is amended by adding Subsection (h) to read as follows:

(h) The board shall develop for its members a comprehensive training and education program on the Texas criminal justice system, with special emphasis on the parole process. All members of the board shall attend a program described by this subsection. A new member of the board shall attend, not later than the 30th day after the date the person becomes a member of the board, a program described by this subsection.

SECTION \_\_\_\_ .03. Section 8, Article 42.18, Code of Criminal Procedure, is amended by adding Subsection (p) to read as follows:

(o) The pardons and paroles division shall develop and implement a comprehensive program to inform inmates and their families about the parole process.

SECTION \_\_\_\_ .04. Section 11, Article 42.18, Code of Criminal Procedure, is amended to read as follows:

Sec. 11. ~~REPRESENTATION OF INMATES [INFORMATION AND ARGUMENTS]~~. (a) The Texas Board of Criminal Justice shall adopt rules as to:

(1) the submission and presentation of information and arguments to parole panels and the pardons and paroles division for and in behalf of inmates; and

(2) the time, place, and manner of contact between a person representing an inmate and an employee of the pardons and paroles division [any person within the jurisdiction of a panel or the division].

(b) A person must register with the ethics commission under Subsection (g) of this section if the person represents an inmate for compensation [All persons presenting information or arguments to a panel or the division shall submit therewith an affidavit stating whether any fee has been paid or is to be paid for their services in the case, the amount of such fee, and by whom such fee is paid or to be paid].

(c) A person required to register under this section shall file a fee affidavit with the pardons and paroles division in a form prescribed by the division for each inmate the person represents for compensation prior to

the time the person first contacts a member of the board or employee of the pardons and paroles division on behalf of the inmate.

(d) The fee affidavit must be written and verified and contain:

(1) the registrant's full name and address;

(2) the registrant's normal business, business phone number, and business address;

(3) the full name of any person associated with, employed by, or contracting with the registrant who previously was a member of the board or the Texas Board of Criminal Justice or was an employee of the Texas Department of Criminal Justice;

(4) the full name and institutional identification number of the inmate the registrant represents;

(5) the amount of compensation the person has received or expects to receive in exchange for the representation; and

(6) the name of the person making the compensation.

(e) The division shall, not later than the third day after the date the fee affidavit is filed, place a copy of the affidavit in the file of an inmate that a parole panel or the board reviews. The division shall also keep a copy of each fee affidavit in a file in a central location.

(f) If a person who has registered under this section receives compensation in excess of the amount reported on the fee affidavit, the person must file with the pardons and paroles division, not later than the fifth day after the date the person receives the additional compensation, a supplemental fee affidavit in a form prescribed by the division indicating the total amount of compensation received for representing that inmate. The division shall follow the procedures in Subsection (e) of this section to process the supplemental affidavit.

(g) Except as provided in Subsection (i) of this section, a person required to register under this section shall, for each calendar year the person represents an inmate, file a representation summary form with the ethics commission on a form prescribed by the commission and pay an annual registration fee of \$100 to the commission. The form must be filed not later than the last day of January in the year following the reporting period and include:

(1) the registrant's full name and address;

(2) the registrant's normal business, business phone number, and business address;

(3) the full name of any person associated with, employed by, or contracting with the registrant who previously was a member of the board or Texas Board of Criminal Justice or was an employee of the Texas Department of Criminal Justice;

(4) the full name and institutional identification number of each inmate the registrant represented in the previous calendar year; and

(5) the amount of compensation the person has received for representing each inmate in the previous calendar year.

(h) If there is a change in the information required to be reported by a registrant under this section, the registrant shall file an amended statement reflecting the change with the commission not later than 10 days after the change occurs.

(i) An attorney licensed in this state is not required to register under this section.

(j) The ethics commission shall submit to the pardons and paroles division a copy of each representation summary form that is filed.

(k) A person commits an offense if a person is required to register under Subsection (g) of this section or make a filing under Subsection (f) of this section and the person fails to register or make the filing. An offense under this subsection is a Class A misdemeanor.

(l) Fees collected under this section shall be deposited to the credit of a special fund in the state treasury to be known as the representation of parolees fund. The legislature may appropriate money from the fund only to the pardons and paroles division or the ethics commission to administer this section.

(m) In this section:

(1) "Compensation" has the meaning assigned by Section 305.002, Government Code.

(2) "Represent" means to contact in person or by telephone, facsimile, or correspondence a member of the board or an employee of the pardons and paroles division on behalf of an inmate.

(3) "Inmate" means a defendant who has been sentenced to the institutional division of the Texas Department of Criminal Justice and is imprisoned or confined in a county jail.

(4) "Commission" means the Texas Ethics Commission.

SECTION \_\_.05. (a) Section 4A, Article 42.18, Code of Criminal Procedure, as added by Section \_\_.01 of this article, applies only to a person who ceases to be a member of the Board of Pardons and Paroles, a member of the Texas Board of Criminal Justice, or an employee of the department on or after the effective date of this article.

(b) The requirement in Section 7(h), Article 42.18, Code of Criminal Procedure, as added in Section \_\_.02 of this Article, that a new member of the Board of Pardons and Paroles attend a comprehensive training and education program on the Texas criminal justice system applies only to a member that begins service on or after the effective date of that section.

SECTION \_\_.06. (a) Except as provided by Subsection (b) of this section, the Article takes effect immediately.

(b) Sections \_\_.01 and \_\_.04 of this Article take effect September 1, 1993.

#### **Amendment No. 11**

Amend C.S.S.B. 532 as follows:

Add SECTIONS \_\_\_\_ and \_\_\_\_ to read as follows:

"SECTION \_\_\_\_ Article 2.12, Code of Criminal Procedure is amended by adding a Subsection (26) to read as follows:

(26) apprehension specialists commissioned by the Texas Youth Commission under Sec. 61.093, Human Resources Code.

SECTION \_\_\_\_ Section 61.093, Human Resources Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) The commission may employ and commission peace officers as apprehension specialists to assist in carrying out the purposes of this section.



(d) Peace officers employed and commissioned under Subsection (c) of this section must be certified by the Commission on Law Enforcement Officer Standards and Education under Article 4413 (29aa), Vernon's Texas Civil Statutes."

**Amendment No. 1 on Third Reading**

Amend C.S.S.B. 532 as follows:

Section 4, Article 42.18, Code of Criminal Procedure, is amended by adding Subsection (a-1) to read as follows:

(a-1) In determining eligibility under Subsection (a)(3) of this section, the compensation or reimbursement that a board member's spouse receives as an employee of the board or of the Texas Department of Criminal Justice may not be considered. This subsection does not affect any restriction on employment or board membership imposed by any other law.

**Amendment No. 2 on Third Reading**

Amend C.S.S.B. 532 in Article 2 of the bill by adding an appropriately numbered section to read as follows and by renumbering the existing sections of Article 2 accordingly:

SECTION 2. \_\_. Article 103.009, Code of Criminal Procedure, is amended to read as follows:

Art. 103.009. FEE RECORDS ~~[BOOKS]~~. (a) Each clerk of a court, county judge, justice of the peace, sheriff, constable, and marshal shall keep a fee record ~~[book]~~. The record ~~[fee-book]~~ must contain:

- (1) a statement of each fee or item of cost charged for a service rendered in a criminal action or proceeding;
- (2) the number and style of the action or proceeding; and
- (3) the name of the officer or person who is entitled to receive the fee.

(b) Any person may inspect a fee record ~~[book]~~ described by Subsection (a).

(c) A statement of an item of cost in a fee record ~~[book]~~ is prima facie evidence of the correctness of the statement.

(d) The county shall provide ~~[fee-books]~~ to officers required to keep a fee record ~~[the-books]~~ by this article equipment and supplies necessary to keep the record.

The amendments were read.

Senator Whitmire moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on S.B. 532 before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Whitmire, Chair; West, Parker, Wentworth, and Armbrister.

**SENATE JOINT RESOLUTION 45 WITH HOUSE AMENDMENT**

Senator Whitmire called S.J.R. 45 from the President's table for consideration of the House amendment to the resolution.

The Presiding Officer laid the resolution and the House amendment before the Senate.

**Amendment No. 1**

Amend S.J.R. 45 as follows:

(1) In Section 1 of the resolution, in proposed Section (e)(1), on page 1, House Committee Report, strike lines 15 and 16 and substitute the following:

institutions, and mental health and mental retardation institutions and for major repair or renovation of existing facilities of those corrections and mental health and mental retardation institutions.

(2) In Section 2 of the resolution, the ballot proposition, strike the last line and substitute: "facilities of corrections and mental health and mental retardation institutions."

The amendment was read.

Senator Whitmire moved to concur in the House amendment to S.J.R. 45.

The motion prevailed by the following vote: Yeas 31, Nays 0.

**SENATE BILL 1068 WITH HOUSE AMENDMENT**

Senator Whitmire called S.B. 1068 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

**Amendment No. 1**

Amend S.B. 1068 in Section 1 of the bill, in Subsection (a)(1)(4), Article 601d-1, Vernon's Texas Civil Statutes (page 2, line 19, House Committee Report) by striking line 19 and substituting:

institutions, including youth corrections institutions, and mental health and mental retardation institutions.

The amendment was read.

On motion of Senator Whitmire and by unanimous consent, the Senate concurred in the House amendment to S.B. 1068 by a viva voce vote.

**SENATE CONCURRENT RESOLUTION 43  
WITH HOUSE AMENDMENT**

Senator Henderson called S.C.R. 43 from the President's table for consideration of the House amendment to the resolution.

The Presiding Officer laid the resolution and the House amendment before the Senate.

**Amendment**

Amend S.C.R. 43 by amending paragraphs seven through ten as follows:

WHEREAS, The dispute resolution centers (alternative dispute resolution systems), created by Section 152.001, Tex. Civ. Prac. & Rem. Code Ann. (Vernon Supp. 1992), for over a decade have provided uniform training, delivery of alternative dispute resolution procedures, as defined by Chapter 154, Tex. Civ. Prac. & Rem. Code Ann. (Vernon Supp. 1992); and collectively represent over 1500 active third party neutrals who provide such services to the largest and most diverse constituencies in Texas; and

WHEREAS, ~~[This group]~~ These groups of specialists could be of invaluable service in providing technical support and advisory assistance to the legislature in its consideration of legislative proposals that could affect alternative dispute resolution in Texas; now, therefore, be it

RESOLVED, That the 73rd Legislature of the State of Texas hereby formally request the Council of the Alternative Dispute Resolution Section of the State Bar of Texas and the dispute resolution centers (alternative dispute resolution systems) of Texas to provide advisory assistance to the Senate Committee on Jurisprudence and the House Committee on Judicial Affairs on request; and, be it further

RESOLVED, That an official copy of this resolution be prepared for each dispute resolution center and the Alternative Dispute Resolution Section of the State Bar of Texas as a formal expression of an intention to seek advisory assistance from the centers and council if needed by the Legislature of the State of Texas.

The amendment was read.

On motion of Senator Henderson and by unanimous consent, the Senate concurred in the House amendment to S.C.R. 43 by a viva voce vote.

**SENATE BILL 709 WITH HOUSE AMENDMENTS**

Senator Henderson called S.B. 709 from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

**Committee Amendment No. 1**

Amend S.B. 709 by adding the following Section \_\_\_\_ and renumbering other sections accordingly:

SECTION \_\_\_\_ Section 51.0031, Education Code, is amended to read as follows:

Section 51.0031. DEPOSITS AND INVESTMENTS. (a) A governing board may deposit funds under its control as provided in Section 51.003 of this code, may invest funds under its control in financial instruments eligible for investment of funds in the state treasury and, with regard to donations, gifts, and trusts, may establish endowment funds that operate as trusts and are managed under prudent person standards.

(b) Funds described in this section may also be invested in cash management and fixed income funds held by organizations exempt from

federal taxation under Section 501(f) of the Internal Revenue Code, as that section may be amended.

(c) If a governing board has under its control at least \$25 million in book value of endowment funds, such governing board may invest all funds described in this section under prudent person standards.

(d) As used in this section, "prudent person standard" is the standard of care described in Article VII, Section 11b, Texas Constitution and means that standard of judgment and care that persons of ordinary prudence, discretion and intelligence exercise in the management of their affairs in regard to the investments of their funds considering probable income as well as probable safety of their capital.

#### **Committee Amendment No. 2**

Amend S.B. 709, SECTION 3, Section 163.004(e) by adding the words "as defined by Section 61.003(8), Education Code" between the words "education" and "may".

The amendments were read.

Senator Henderson moved to concur in the House amendments to S.B. 709.

The motion prevailed by the following vote: Yeas 31, Nays 0.

#### **GUEST PRESENTED**

Senator Lucio was recognized and introduced to the Senate Grammy Award winner Little Joe Hernandez.

The Senate welcomed its distinguished guest.

#### **SENATE BILL 1229 WITH HOUSE AMENDMENTS**

Senator Henderson called S.B. 1229 from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

#### **Committee Amendment No. 1**

Amend S.B. 1229 as follows:

(1) On page 2, line 9, insert at the end of the line before the period "at least 120 days before the end of the district's fiscal year".

(2) On page 3, line 23, insert at the end of the line before the period "at least 120 days before the end of the district's fiscal year".

(3) On page 1, lines 18 and 19, replace the words "personnel, and property" with the words "officials, and assets".

(4) On page 3, lines 9 and 10, replace the words "personnel, and property" with the words "officials, and assets".

#### **Committee Amendment No. 2**

Amend S.B. 1229 by inserting new Sections 5-9, to read as follows, and by renumbering subsequent sections accordingly:

SECTION 5. Chapter 794, Health and Safety Code, is amended by adding Subchapter F to read as follows:

**SUBCHAPTER F. CONVERSION TO EMERGENCY SERVICES DISTRICT**

**Sec. 794.100. CONVERSION AUTHORIZED.** A district may be converted to an emergency services district if:

(1) the board receives a petition for conversion from the qualified voters in the district; and

(2) the conversion is approved by a majority of the qualified voters of the district who vote at an election called and held for that purpose.

**Sec. 794.101. CONTENTS OF PETITION.** (a) The petition prescribed by Section 794.100 must:

(1) state the name of the proposed emergency services district;

(2) describe the existing district's boundaries by metes and bounds or other sufficient legal description; and

(3) be signed by at least 100 qualified voters in the existing district or, if there are fewer than 100 of those voters, be signed by a majority of those voters.

(b) The name of the district proposed by the petition must be "\_\_\_\_\_ County Emergency Services District No. \_\_\_\_\_," with the name of the county and the proper consecutive number inserted.

**Sec. 794.102. ORDER OF ELECTION.** (a) Not later than the 30th day after the date the petition is presented to the board, the board shall order an election on the question of converting the district.

(b) The election shall be held not later than the 60th day after the date on which the election is ordered.

(c) Section 41.001(a), Election Code, does not apply to an election ordered under this section.

**Sec. 794.103. BALLOT PROPOSITION.** The ballot for an election ordered under Section 794.102 shall be printed to permit voting for or against the proposition: "The conversion of the \_\_\_\_\_ Rural Fire Prevention District from a district operating under Chapter 794, Health and Safety Code, to a district operating under Chapter 775, Health and Safety Code."

**Sec. 794.104. EFFECTIVE DATE OF CONVERSION.** If a majority of the qualified voters participating in the election vote in favor of the proposition, the conversion becomes effective on the 30th day after the date on which the election results are declared.

**Sec. 794.105. DISTRICT RESPONSIBILITIES.** If a district is converted to an emergency services district, the emergency services district assumes all obligations and outstanding indebtedness of the district.

SECTION 6. Section 775.056, Health and Safety Code, is repealed.

SECTION 7. The legislature finds that:

(1) Chapter 673, Acts of the 70th Legislature, Regular Session, 1987, was adopted and approved, effective January 1, 1988;

(2) that Act, implementing Section 48-e, Article III, of the Texas Constitution, relates to the creation and operation of emergency services districts; Section 33 of that Act provides for the conversion of a rural fire prevention district to an emergency services district;

(3) the intent of the legislature in adopting Section 33 of that Act was that, if a majority of the voters in a rural fire prevention district voted to convert the district to an emergency services district, the boundaries of the emergency services district would be coextensive with the boundaries of the fire prevention district, and the territory within the boundaries of the emergency services district would be coextensive with the territory within the boundaries of the fire prevention district;

(4) in certain counties in this state, valid elections were conducted to convert certain rural fire prevention districts to emergency services districts, in which elections a majority of the participating voters voted in favor of the conversion; however, the boundaries of those emergency services districts are not coextensive with the boundaries of the fire prevention districts, and the territory within the boundaries of the emergency services districts is not coextensive with the territory that was within the boundaries of the fire prevention districts;

(5) the act of establishing boundaries of the emergency services districts that are not coextensive with the boundaries of the rural fire prevention district, and the act of excluding from the emergency services districts territory that was within the boundaries of the fire prevention districts, were inconsistent with Section 33 of that Act, contrary to the intent of the legislature, and invalid; and

(6) the health, safety, and welfare of persons and property in those counties creates an emergency that requires immediate action by the legislature.

SECTION 8. On and after the effective date of this Act:

(1) the boundaries of an emergency services district that was converted from a rural fire prevention district following an election held for that purpose are coextensive with the boundaries of the fire prevention district;

(2) the territory within the boundaries of an emergency services district that was converted from a rural fire prevention district following an election held for that purpose is coextensive with the territory within the boundaries of the fire prevention district; and

(3) each act or attempted act of an emergency services district taken before the effective date of this Act is validated in all respects and applies to territory within the boundaries of the district as if it had been within the district when the act or attempted act was taken.

SECTION 9. Section 8 of this Act does not apply to or affect a matter that on the effective date of this Act is involved in litigation in a court of competent jurisdiction in this state.

The amendments were read.

On motion of Senator Henderson and by unanimous consent, the Senate concurred in the House amendments to S.B. 1229 by a viva voce vote.

#### **SENATE BILL 594 WITH HOUSE AMENDMENT**

Senator Whitmire called S.B. 594 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

**Amendment**

Amend S.B. 594 by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the firemen's relief and retirement fund in certain municipalities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 2(l), Chapter 432, Acts of the 64th Legislature, 1975 (Article 6243e.2, Vernon's Texas Civil Statutes), is amended to read as follows:

(1)(1) The board may, from fund assets, purchase from an insurer licensed to do business in this state insurance to cover liabilities and losses of the fund and to indemnify and hold the members of the board and employees of the board, individually and collectively, harmless from the effects and consequences of their acts, omissions, and conduct within the scope of their official capacity as fiduciaries or cofiduciaries or within the scope of what the board member or employee believed in good faith, at the time, to be the board member's or employee's official capacity. However, an insurance company through which insurance is purchased under this subsection has a cause of action against a board member or employee to the extent that a loss results from the board member's or employee's wilful and malicious misconduct or gross negligence.

(2) If insurance under Subdivision (1) of this subsection is unavailable, insufficient, inadequate, or not in effect, the board may indemnify board members or employees of the board for liability imposed as damages and for reasonable costs and expenses incurred by those individuals in defense of an alleged act, error, or omission committed in the individual's official capacity or within the scope of what the board member or employee believed in good faith, at the time, to be the board member's or employee's official capacity. The board may not indemnify a board member or an employee for the amount of a loss that results from the board member's or the employee's wilful and malicious misconduct or gross negligence.

(3) The board may establish a self-insurance fund to pay claims for indemnification as provided by Subdivision (2) of this subsection. The board shall provide that the self-insurance fund must be limited to an amount not to exceed the greater of three percent of the fund assets or \$5 million. The self-insurance fund shall be invested in the same manner as other assets of the fund, and all earnings and losses from investing the self-insurance fund shall be credited to the self-insurance fund unless that credit exceeds the limit on the self-insurance fund set by the board or this subdivision. Amounts held in the self-insurance fund may not be included in the actuarial valuation for purposes of determining:

(A) the city contribution rate; or

(B) the assets available to satisfy the actuarial liabilities of the fund to pay service, disability, or death benefits provided by this Act.

(4) A decision to indemnify or make a reimbursement out of the self-insurance fund must be made by a majority vote of board members eligible to vote on the matter. If the proposed indemnification or reimbursement is of a board member, that board member may not vote on the matter.

SECTION 2. Section 4, Chapter 432, Acts of the 64th Legislature, 1975 (Article 6243e.2, Vernon's Texas Civil Statutes), is amended by adding Subsection (o) to read as follows:

(o) Notwithstanding any other provision of this Act, a member or survivor receiving pension or survivor benefits may make a one-time election to receive a smaller pension or survivor benefit and may make a one-time election not to receive any future cost-of-living increases in the pension or survivor benefits received by the person or the person's beneficiary. An election under this subsection must be made in writing and submitted to the board of trustees for approval. On the date the board grants approval of an election under this subsection, the election is irrevocable.

SECTION 3. Section 6, Chapter 432, Acts of the 64th Legislature, 1975 (Article 6243e.2, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6. DISABILITY. (a)(1) A member is eligible for an on-duty disability allowance under Subdivision (2) or (3) of this subsection on:

(A) application to the board of trustees for disability benefits by the member or the member's legal representative;

(B) a finding by the board of trustees that the member is physically or mentally disabled because of a bodily injury received in, or illness caused by, the performance of the member's duties; and

(C) a finding by the board of trustees that the disability of the member is likely to be permanent.

(2) If the board of trustees finds that an eligible member is not capable of performing the usual and customary duties of the member's classification or position because of the member's disability, the board shall retire the member on a monthly disability allowance in an amount equal to the greater of:

(A) 50 percent of the member's average monthly salary; or

(B) the benefit the member would have been entitled to receive based on years of service under Section 4 of this Act if the member had retired from service on the effective date of the member's disability retirement.

(3) If the board of trustees finds that an eligible member is not capable of performing any substantial gainful activity because of the member's disability, the board shall retire the member on a monthly disability allowance in an amount equal to the greater of:

(A) 75 percent of the member's average monthly salary; or

(B) the benefit the member would have been entitled to receive based on years of service under Section 4 of this Act if the member had retired from service on the effective date of the member's



~~disability retirement [Whenever a member becomes physically or mentally disabled while in or as a consequence of the performance of his duty or becomes physically or mentally disabled from any cause whatsoever after he has participated in a fund for a period of 20 years or more, the board of trustees shall, on his request, or without a request, if they determine that the member is not capable of performing the usual and customary duties of his classification or position, retire the member on a monthly disability allowance of an amount equal to 50 percent of his average monthly salary for the highest 36 months during his participation, or so much thereof as he may have served].~~

(b)(1) A member is eligible for an off-duty disability allowance under Subdivision (2) of this subsection on:

(A) application to the board of trustees for disability benefits by the member or the member's legal representative;

(B) a finding by the board of trustees that:

(i) the member is physically or mentally disabled from any cause other than an injury received in, or illness caused by, the performance of the member's duties; and

(ii) the member is not capable of performing the usual and customary duties of the member's classification or position; and

(C) a finding by the board of trustees that the disability of the member is likely to be permanent.

(2) The board of trustees shall retire the member on a monthly disability allowance in an amount equal to the greater of:

(A) 25 percent of the member's average monthly salary, plus 2-1/2 percent of the member's average monthly salary for each full year of service and participation in the fund, except that the total monthly disability allowance under this paragraph may not exceed 50 percent of the member's average monthly salary; or

(B) the benefit the member would have been entitled to receive based on years of service under Section 4 of this Act if the member had retired from service on the effective date of the member's disability retirement [Whenever a member becomes disabled from any cause other than a disability acquired in the performance of his duty as a fire fighter, a monthly pension allowance shall be paid to the member. Such monthly pension allowance shall be equal to 25 percent of the average monthly salary of the member, plus two and one-half percent of the average monthly salary for each full year of service and of participation in a fund, except that the monthly pension allowance shall not exceed 50 percent of the average monthly salary. The average monthly salary shall be based on the monthly average of the member's salary for the highest 36 months during his participation or so much as he may have served preceding the date of the retirement].

(c) A member is not eligible for an on-duty or off-duty disability allowance as provided by Subsection (a) or (b) of this section if the member becomes disabled as a direct and proximate result of a condition that existed on the date the member began membership in the fund. If the member is not eligible to retire under Section 4 of this Act, the member may elect a refund of benefits or, if eligible, a deferred pension under

Section 5 of this Act. A member has a preexisting condition under this subsection if the member has:

(1) symptoms that would cause an ordinarily prudent person to seek diagnosis, care, or treatment within a five-year period before the effective date of the member's membership in the fund; or

(2) a condition for which medical advice or treatment was recommended by or received from a physician within a five-year period before the effective date of the member's membership in the fund.

(d) The board of trustees shall determine the disability of a member in accordance with uniform principles consistently applied on the basis of medical or other evidence that the board determines is necessary or desirable.

(e) In this section, "average monthly salary" means the monthly average of the member's salary for the highest 36 months during the member's participation in the fund or, if the member participated in the fund for less than 36 months, the monthly average of the member's salary for the number of months the member participated in the fund [If the member is eligible to be retired under the provisions of Section 4 of this Act, he may elect to have his monthly pension allowance calculated under that section].

SECTION 4. Section 7(e), Chapter 432, Acts of the 64th Legislature, 1975 (Article 6243e.2, Vernon's Texas Civil Statutes), is amended to read as follows:

(e) Any member may designate one or more beneficiaries [a beneficiary] to receive the total contribution made by the member to the fund if the member has no eligible survivors prescribed in Section 11 of this Act. The member shall file a written designation of beneficiary with the board of trustees of the Firemen's Relief and Retirement Fund [stating his beneficiary]. Such designation shall include the name and the address of each [the] beneficiary. The board shall upon the death of the member pay only a total amount equal to the amount contributed by the member to the stated beneficiary or beneficiaries except that the designated beneficiary or beneficiaries of a member dying after August 31, 1987, are [if the board of trustees adopts Section 5(b) of this Act by majority vote, a designated beneficiary entitled to a distribution because of the death of a member after the date of the adoption is] entitled to receive a total amount equal to the amount, if any, payable pursuant to Section 5(b) of this Act as if the member terminated employment on the date of death. On application of a member's estate, the board shall pay the estate an amount equal to the amount contributed by the member if the member failed to designate a beneficiary. An amount payable under this subsection may not escheat to the state.

SECTION 5. Section 8, Chapter 432, Acts of the 64th Legislature, 1975 (Article 6243e.2, Vernon's Texas Civil Statutes), is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) No person may be retired [either] for [total or temporary] disability, except as provided in this Act, nor receive any allowance from the fund, unless and until there has been filed with the board of trustees certificates of his disability or eligibility signed and sworn to by that

person and his physician or by any physician selected by the board of trustees. The board of trustees, in its discretion, may require other or additional evidence of disability before ordering retirement or payment.

(d)(1) A benefit payable on the death of a member or eligible beneficiary may not be paid to a person convicted of causing that death but instead is payable to a person who would have been entitled to the benefit had the convicted person predeceased the decedent. If no person is entitled to the benefit under this subdivision, the benefit is payable to the decedent's estate.

(2) Except as provided by Subdivision (3) of this subsection, the board is not required to pay a benefit in the manner provided by Subdivision (1) of this subsection unless the board receives actual notice of the conviction of the person who would have been entitled to the benefit.

(3) The board may suspend payment of a benefit payable on the death of a member or an eligible beneficiary on indictment of the person who would have been entitled to the benefits, and the suspension shall remain in effect until final disposition of the charges relating to the cause of death. If the benefit payment is suspended under this subdivision and the person is not convicted, the benefit is payable with interest computed at the rate earned by the fund during the time the benefit payment was suspended.

(4) For purposes of this subsection, a person has been convicted of causing the death of a member or eligible beneficiary if the person:

(A) has pleaded guilty or nolo contendere to, or the person has been found guilty by a court of, an offense at the trial of which it is established that the person's intentional or knowing act or omission caused the death of the member or eligible beneficiary, regardless of whether sentence is imposed or probated; and

(B) has no appeal of the conviction pending, and the time provided for appeal has expired.

SECTION 6. Section 10(d)(2), Chapter 432, Acts of the 64th Legislature, 1975 (Article 6243e.2, Vernon's Texas Civil Statutes), is amended to read as follows:

(2) The board of trustees shall establish minimum physical requirements which shall not exceed the physical requirements established by the Commission pursuant to Section 143.022, Local Government Code, and its subsequent amendments [9, Chapter 325, Acts of the 50th Legislature, 1947 (Article 1269m, Vernon's Texas Civil Statutes)], for membership in the fund, which physical requirements shall be the same for all applicants. At the time that physical examinations are administered on behalf of the city, each applicant shall be provided written notice that a copy of the results of the examination will be forwarded to the board of trustees of the fund to determine eligibility for membership in the fund and the existence of any preexisting conditions. Within 10 days after the date of a physical examination performed on an applicant for a beginning position in the fire department as required by Section 143.022, Local Government Code, and its subsequent amendments [9, Chapter 325, Acts of the 50th Legislature, 1947 (Article 1269m, Vernon's Texas Civil

~~Statutes)), the city shall provide to the board of trustees [shall obtain] a copy of all documents resulting from the physical examination. The board of trustees may require additional physical examinations if necessary to determine whether the applicant meets the minimum physical requirements for membership in the fund. The fund [applicant] shall pay the cost of any additional physical examination required by the board of trustees. Within a reasonable time after receiving the examination reports of an applicant, the [The] board of trustees shall, on the basis of one or more physical examinations, determine whether the applicant meets the minimum physical requirements for membership in the fund. The board of trustees shall notify the applicant and the chief of the fire department not later than 10 calendar days after the date of the board decision on the applicant's satisfaction of the minimum physical requirements [before the first day of cadet training of their acceptance or rejection of the applicant]. If the board of trustees rejects the applicant, the applicant may request further examination by a board of three physicians appointed by the board of trustees at the expense of the applicant. If a physician board finds that an applicant meets the minimum physical requirements for membership in the fund, the board of trustees shall accept the applicant for membership. If accepted by the board of trustees, the applicant's membership is effective on being appointed to the position of probationary fire fighter.~~

SECTION 7. Section 15, Chapter 432, Acts of the 64th Legislature, 1975 (Article 6243c.2, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 15. MEDICAL EXAMINATION OF MEMBER RETIRING FOR DISABILITY OR PERSON CLAIMING SURVIVOR BENEFITS AS DISABLED CHILD. (a) The board of trustees, in its discretion, at any time may cause any person retired for disability or receiving survivor benefits as a disabled child under the provisions of this Act to appear and undergo a medical examination by any physician appointed or selected by the board of trustees for the purpose,

(b) A person retired for disability under Section 6(a)(3) of this Act or a person receiving survivor benefits as a disabled child under this Act shall file an annual report of employment activities and earnings with the board of trustees. The board of trustees shall establish the form of the report and the time for filing the report.

(c) The[~~—and the~~] result of the examination, the [and] report by the physician, and the report of employment activities and earnings shall be considered by the board of trustees in determining whether the relief in the case shall be continued, increased (if less than the maximum provided), decreased, or discontinued. Should any person receiving relief under the provisions of this Act, after due notice from the board of trustees, fail to appear and be reexamined or fail to file the report of employment activities and earnings, unless excused by the board, [fail to appear or refuse to submit to reexamination;] the board of trustees may in its discretion reduce or entirely discontinue relief.

SECTION 8. Section 22, Chapter 432, Acts of the 64th Legislature, 1975 (Article 6243e.2, Vernon's Texas Civil Statutes), is amended to read as follows:

**Sec. 22. EMPLOYMENT OF PROFESSIONAL INVESTMENT MANAGERS** ~~[COUNSELING SERVICE]. The board of trustees may engage and employ professional investment managers as provided by Section 802.204, Government Code, and its subsequent amendments [counselors to advise and assist the board in the investment of the assets of the fund. The investment counseling service must be provided by a nationally known organization whose business functions include rendering continuous investment advisory service to public pension and retirement funds. The city may pay the entire cost of this counseling service; if not paid by the city the cost may be paid from the assets of the fund].~~

**SECTION 9.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Whitmire moved to concur in the House amendment to **S.B. 594.**

The motion prevailed by the following vote: Yeas 31, Nays 0.

(President in Chair)

#### **GUESTS PRESENTED**

Senator Sims was recognized and introduced to the Senate Will Hardeman and Wroe Jackson, serving today as Senate Pages.

The Senate welcomed these young men.

#### **GUESTS PRESENTED**

Senator Bivins was recognized and introduced to the Senate the seventh-grade class from St. Andrews of Amarillo and their teacher, Connie Wooten.

The Senate welcomed its guests.

#### **SENATE BILL 1332 ON SECOND READING**

On motion of Senator Truan and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**S.B. 1332**, Relating to analyses of state budget proposals and programs and of the budgetary effects of proposed legislation.

The bill was read second time.

Senator Truan offered the following amendment to the bill:

Amend **S.B. 1332** by striking all below the enacting clause and substituting the following:

**SECTION 1.** Section 322.011(b), Government Code, is amended to read as follows:

(b) The board ~~may~~ ~~[shall]~~ evaluate the programs and operations of ~~any~~ ~~[each]~~ institution, department, agency, or commission that received an appropriation in the most recent General Appropriations Act. An institution, department, agency, or commission may not be evaluated until after the end of the first full fiscal year of its operation.

SECTION 2. Sections 1, 2, and 3, Article 6252-31, Revised Statutes, as added by Chapter 384, Acts of the 72nd Legislature, Regular Session, 1991, are amended to read as follows:

Sec. 1. DEFINITIONS. In this Act:

(1) "Agency" means ~~a department, commission, board, office, or other entity of state government, including a university system and an institution of higher education as defined by Section 61.003, Education Code, but excluding the office of the Lieutenant Governor, that:~~

~~(A) has authority that is not limited to a geographical portion of the state;~~

~~(B) was created by the constitution or a state statute with an ongoing mission and responsibilities;~~

~~(C) is not within the judicial or legislative branch of government;~~

~~(D) is not a committee created under state law whose primary function is to advise an agency;~~

~~(E) has independent administrative authority and resources;~~

~~and~~

~~(F) is not a state-funded junior or community college [an agency, board, commission, or other office of the executive branch of state government, except the office of the Lieutenant Governor].~~

(2) "Capital improvement" means ~~any building or infrastructure project that will be owned by the state and built with direct appropriations or with the proceeds of state-issued bonds designed to be repaid with the general revenues of the state. The term does not include a building or project financed with bonds that, although backed by the full faith and credit of the state, are reasonably expected to be paid from revenue sources other than general revenues.~~

(3) "Plan" means a strategic plan as required by this Act.

Sec. 2. STRATEGIC PLANS. (a) Each agency shall develop a strategic plan for its operations in accordance with the provisions of this Act and the goals established hereunder. ~~The Legislative Budget Board and the Governor's Office of Budget and Planning shall determine the elements required to be included in each agency's strategic plan. Unless modified by the Legislative Budget Board and the Governor's Office of Budget and Planning, each~~ ~~[The]~~ plan shall include each of the following items or an explanation why an item does not apply to the agency;[-]

(1) A statement of the mission, goals, and objectives of the agency;

(2) Measures of the output and outcome of the agency in terms of indicators to be developed under this Act;

(3) Identification of priority and other service populations, or other service measures, under current law and how those populations are expected to change within the period of the plan;

(4) An analysis of the use of current agency resources in meeting current needs and expected future needs, and additional resources that may be necessary to meet future needs;

(5) An analysis of any likely or expected changes in the services provided by agency due to changes in state or federal law;

(6) Plans and strategies for meeting current and future needs and achieving the goals established for the particular area of state government; ~~[and]~~

(7) A description of the capital improvement needs of the agency during the period covered by the plan;

(8) A prioritization, if appropriate, of the capital improvement needs of the agency during the period; and

(9) Other information that may be required.

(b) Each agency shall issue a plan ~~[not later than March 1 of]~~ each even-numbered year. The plan will cover a period of five fiscal years beginning with the next odd-numbered fiscal year ~~[six years from the date that it is required to be issued]~~. The Texas Higher Education Coordinating Board, in conjunction with all state-funded junior and community colleges, shall develop a consolidated public junior and community college strategic plan under this Act.

(c) Each agency shall send a copy of each plan issued to the Governor, the Lieutenant Governor, the Speaker of the House, the Legislative Budget Board, the Sunset Commission, the State Auditor, and the Comptroller, and two copies to the Legislative Reference Library and the state publications clearinghouse of the Texas State Library.

(d) Compilation of State Agency Plan.

(1) The Governor's Office of Budget and Planning and the Legislative Budget Board shall develop forms and instructions for the use of the agencies in the preparation of their plans.

(2) The Governor's Office of Budget and Planning and the Legislative Budget Board shall work with individual agencies to determine acceptable measures of ~~[workload, output, and]~~ outcome, output, unit cost, and cost effectiveness for use in plans.

(3) Upon receipt of the individual agency plans, the Governor's Office of Budget and Planning and the Legislative Budget Board may ~~[shall]~~ work together to compile a long-range strategic plan for state government based on the individual agency plans.

(4) If additional information is required concerning any agency plan submitted, the Governor's Office of Budget and Planning or the Legislative Budget Board may request such information from the agency and the information shall be supplied in a timely fashion.

(5) The Legislative Budget Board, together with the Governor's Office of Budget and Planning, may hold hearings on any matter required by this Act.

~~[(6) The final compiled report shall be submitted to the Governor, the Lieutenant Governor, the Comptroller, and each member of the Legislature not later than September 1 of each even-numbered year.]~~

Sec. 3. GOALS FOR STATE GOVERNMENT. (a) The governor, in cooperation with the Legislative Budget Board, shall establish and adopt

goals for achievement for each functional area of state government. Unless modified by the Governor's Office of Budget and Planning and the Legislative Budget Board, these functional areas shall~~[, to]~~ include:

- (1) Education;
- (2) Regulation ~~[Regulatory]~~;
- (3) Natural Resources;
- (4) Health;
- (5) Human Services;
- (6) Transportation;
- (7) Public Safety and Corrections;
- (8) General Government; and
- (9) State Employee Benefits.

(b) A statement of the goals in each applicable functional area shall be provided to each state agency ~~[not later than October 1 of each odd-numbered year]~~.

SECTION 3. Section 4(c), Article 6252-31, Revised Statutes, as added by Chapter 384, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

(c) The information shall be provided not later than March 1 ~~[September 1]~~ of each even-numbered ~~[odd-numbered]~~ year.

SECTION 4. Section 7, Article 6252-31, Revised Statutes, as added by Chapter 384, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

Sec. 7. COMPTROLLER'S REVIEW. The Comptroller may periodically review and analyze the effectiveness and efficiency of the policies, management, fiscal affairs, and operations of state agencies, and shall report the Comptroller's ~~[his]~~ findings to the Governor, Lieutenant Governor, and Speaker of the House of Representatives. The Legislature may consider the Comptroller's reports in connection with the legislative appropriations process.

SECTION 5. (a) The Legislative Budget Board shall examine methods to identify and quantify the spending interrelationships between functional areas, agencies, goals, objectives, and strategies.

(b) In examining these methods, the board shall consider interrelationships that are caused by increased or decreased need for state spending by various population groups as well as interrelationships that result from requirements or prohibitions provided by federal and state statutes and case law. The board shall consider demographic projections as well as state revenue projections.

(c) The board may apply methods examined under this section in a pilot program involving the analysis of budget proposals or agency strategic plans in one or more functional areas or of one or more state agencies.

(d) All state agencies shall cooperate with the board in its performance of its functions under this section.

(e) The board shall report to the 74th Legislature its findings and recommendations regarding feasible methodologies and potential applications to the state's strategic planning, budgeting, and legislative processes. The recommendations shall address existing and proposed



goals, objectives, and strategies as outlined in the state's strategic plan and the General Appropriations Act.

**SECTION 6.** The following provisions are repealed:

- (1) Subchapter F, Chapter 316, Government Code;
- (2) Section 7B, Chapter 1078, Acts of the 70th Legislature, Regular Session, 1987 (Article 717k-7, Vernon's Texas Civil Statutes);
- (3) Section 8, Article 6252-31, Revised Statutes, as added by Chapter 384, Acts of the 72nd Legislature, Regular Session, 1991; and
- (4) Article 6252-32, Revised Statutes.

**SECTION 7.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Truan and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment by a viva voce vote.

#### **SENATE BILL 1332 ON THIRD READING**

Senator Truan moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that S.B. 1332 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

#### **GUEST PRESENTED**

Senator Patterson was recognized and introduced to the Senate his daughter Emily.

The Senate welcomed Emily.

#### **COMMITTEE SUBSTITUTE**

#### **SENATE BILL 1477 ON SECOND READING**

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**C.S.S.B. 1477**, Relating to the creation, administration, powers, duties, operation, and financing of the Edwards Aquifer Authority and the management of the Edwards Aquifer; granting the power of eminent domain; providing civil and criminal penalties; and validating the creation of the Uvalde County Underground Water Conservation District.

The bill was read second time.

Senator Armbrister offered the following amendment to the bill:

Amend C.S.S.B. 1477 by striking Section 1.04(6) of the bill and substituting:

(6) The part of Guadalupe County beginning at the Guadalupe County-Caldwell County-Hays County line at the San Marcos River in the northeast corner of Guadalupe County, Texas.

THENCE southwest along the Guadalupe County-Hays County line to the intersect of the Guadalupe County-Hays County-Comal County line.

THENCE southwest along the Guadalupe County-Comal County line to the intersect of the Guadalupe County-Comal County-Bexar County intersect at the Cibolo creek.

THENCE south along the Guadalupe County-Bexar County line along the Cibolo creek to the intersect of the Guadalupe County-Bexar County-Wilson County line.

THENCE south along the Guadalupe County-Wilson County line along the Cibolo creek to the intersect and crossing of Guadalupe County Road 417.

THENCE east along Guadalupe County Road 417 to the intersect of Guadalupe County Road 417 and Guadalupe County Road 412.

THENCE northeast along Guadalupe County Road 412 to the intersect of Guadalupe County Road 412 and Guadalupe County Road 411 A.

THENCE east along Guadalupe County Road 411 A to the intersect of Guadalupe County Road 411 A and Farm-to-Market road number 725.

THENCE north along Farm to Market Road 725 to the intersect of Farm to Market Road 725 and Interstate Highway 10.

THENCE east along Interstate Highway 10 to the intersect of Interstate Highway 10 and State Highway 90.

THENCE east along State Highway 90 to the Guadalupe County-Caldwell County line at the San Marcos river.

THENCE northwest along the Guadalupe County-Caldwell County line along the San Marcos river to the place of beginning; and

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Armbrister and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment by a viva voce vote.

#### **COMMITTEE SUBSTITUTE SENATE BILL 1477 ON THIRD READING**

Senator Armbrister moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that C.S.S.B. 1477 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 2.

Yeas: Armbrister, Barrientos, Brown, Carriker, Ellis, Haley, Harris of Tarrant, Harris of Dallas, Henderson, Leedom, Lucio, Luna, Madla, Moncrief, Montford, Nelson, Parker, Patterson, Ratliff, Rosson, Shapiro, Shelley, Sibley, Truan, Turner, Wentworth, West, Whitmire, Zaffirini.

Nays: Bivins, Sims.

(Senator Shelley in Chair)

(President in Chair)

The bill was read third time and was passed by a viva voce vote.

#### RECORD OF VOTES

Senators Bivins, Haley, Henderson, and Sims asked to be recorded as voting "Nay" on the final passage of the bill.

#### GUESTS PRESENTED

Senator Haley was recognized and introduced to the Senate Superintendent of the Evadale Independent School District of Jasper County, Jim Cook, accompanied by six school board members.

The Senate welcomed its guests.

(Senator Truan in Chair)

#### COMMITTEE SUBSTITUTE SENATE BILL 880 ON SECOND READING

On motion of Senator Barrientos and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**C.S.S.B. 880**, Relating to the authority of a local government or state agency to implement a habitat plan to protect endangered species and to impose reasonable and necessary fees under the plan; providing criminal and civil penalties.

The bill was read second time.

(President in Chair)

Senator Barrientos offered the following amendment to the bill:

Amend C.S.S.B. 880 as follows:

(1) On page 5, line 18, in Sec. 83.015, paragraph (b), insert the following after the word "entity" and before the period: "under such terms and conditions acceptable to the parties, including but not limited to such consideration as deemed necessary, notwithstanding any other provisions of this Subchapter"

(2) On page 9, line 26, in Section 83.021(a), insert "budget, fee schedule" between "ordinance" and "rule".

(3) On page 11, lines 21 through 26, SECTION 3(b), strike that paragraph and substitute in lieu thereof: "(b) A plan participant may not collect the development process surcharge if the cumulative amount of the surcharge collected by all plan participants exceeds the cumulative amount of all funds expended, including bond proceeds and interest paid to service the bond debt, by the plan participants for conservation and protection of endangered species. In determining funds expended by plan participants, funds received from the development surcharge shall be excluded."

(4) On page 12, between lines 5 and 6, insert the following and renumber the subsequent sections appropriately: "SECTION 5. The imposition of a habitat mitigation fee of any kind is expressly prohibited under this Act."

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Barrientos and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE  
SENATE BILL 880 ON THIRD READING**

Senator Barrientos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that C.S.S.B. 880 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

**COMMITTEE SUBSTITUTE  
SENATE BILL 172 ON SECOND READING**

On motion of Senator Sims and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**C.S.S.B. 172**, Relating to pipeline easements.

The bill was read second time.

Senator Shelley offered the following amendment to the bill:

Amend **C.S.S.B. 172** as follows:

(1) In SECTION 1 of the bill, on page 1, line 10, between the words "pipeline" and "which", insert the word "for".

(2) In SECTION 1 of the bill, on page 1, line 11, delete the word "exercises".

(3) In SECTION 1 of the bill, on page 1, line 11, between the words "domain" and "under", insert the language "is available".

(4) In SECTION 1 of the bill, on page 1, line 15, delete the number "50" and insert the number "60".

(5) In SECTION 1 of the bill, on page 2, line 32, delete the number "50" and insert the number "60".

(6) In SECTION 1 of the bill, on page 2, line 37, between the words "under" and "common", insert the language "the original grant, prescriptive rights, or".

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Sims and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE  
SENATE BILL 172 ON THIRD READING**

Senator Sims moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.S.B. 172** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Bivins.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0, Present-not voting 1. (Same as previous roll call)

**COMMITTEE SUBSTITUTE  
SENATE BILL 773 ON SECOND READING**

On motion of Senator Whitmire and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**C.S.S.B. 773**, Relating to the creation, powers, duties, and funding of regional poison control centers.

The bill was read second time and was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE  
SENATE BILL 773 ON THIRD READING**

Senator Whitmire moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.S.B. 773** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 2.

Yeas: Armbrister, Barrientos, Carriker, Ellis, Haley, Harris of Tarrant, Harris of Dallas, Henderson, Leedom, Lucio, Luna, Madla, Moncrief, Montford, Nelson, Parker, Patterson, Ratliff, Rosson, Shapiro, Shelley, Sibley, Sims, Truan, Turner, Wentworth, West, Whitmire, Zaffirini.

Nays: Bivins, Brown.

The bill was read third time and was passed by a viva voce vote.

**RECORD OF VOTES**

Senators Bivins and Brown asked to be recorded as voting "Nay" on the final passage of the bill.

**COMMITTEE SUBSTITUTE  
SENATE BILL 941 ON SECOND READING**

On motion of Senator Sibley and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**C.S.S.B. 941**, Relating to enclosures around pools and spas owned, controlled, or maintained by multi-unit rental complex owners or property owners associations; providing a civil penalty.

The bill was read second time and was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE  
SENATE BILL 941 ON THIRD READING**

Senator Sibley moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that C.S.S.B. 941 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

**COMMITTEE SUBSTITUTE  
SENATE BILL 963 ON SECOND READING**

On motion of Senator Sims and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 963, Relating to municipal solid waste management.

The bill was read second time.

Senator Shapiro offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend C.S.S.B. 963 in SECTION 2, by renumbering new Subsections 361.014 (9) and (10) as (10) and (11) and inserting a new Subsection (9) to read as follows:

(9) provision of funds to mitigate the economic and environmental impacts of lead-acid battery recycling activities on local governments;

The amendment was read and was adopted by a viva voce vote.

Senator Sims offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend C.S.S.B. 963 in SECTION 11, Sec. 361.0961(a)(2), by adding the following between the words "facility" and "permitted":  
"except for a solid waste facility owned by the local government."

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Sims and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE  
SENATE BILL 963 ON THIRD READING**

Senator Sims moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that C.S.S.B. 963 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Rosson.

The bill was read third time and was passed by a viva voce vote.

**RECORD OF VOTE**

Senator Rosson asked to be recorded as voting "Nay" on the final passage of the bill.

**COMMITTEE SUBSTITUTE  
SENATE BILL 994 ON SECOND READING**

On motion of Senator Nelson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**C.S.S.B. 994**, Relating to community education child care services.

The bill was read second time and was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE  
SENATE BILL 994 ON THIRD READING**

Senator Nelson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.S.B. 994** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1143 ON SECOND READING**

On motion of Senator Patterson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**C.S.S.B. 1143**, Relating to the prevention of horse theft.

The bill was read second time and was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1143 ON THIRD READING**

Senator Patterson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.S.B. 1143** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1236 ON SECOND READING**

On motion of Senator Turner and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**C.S.S.B. 1236**, Relating to creation of the office of criminal district attorney of Waller County, to the abolition of the office of county attorney

in Waller County, and to the abolition of the jurisdiction of the district attorney for the 9th Judicial District in Waller County.

The bill was read second time.

Senator Turner offered the following amendment to the bill:

Amend C.S.S.B. 1236 as follows:

In Section 3, Sec. 44.337, page 2, line 36, strike "five" and replace it with "three".

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Turner and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment by a viva voce vote.

#### **COMMITTEE SUBSTITUTE SENATE BILL 1236 ON THIRD READING**

Senator Turner moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that C.S.S.B. 1236 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

#### **SENATE BILL 1393 ON SECOND READING**

On motion of Senator Shelley and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**S.B. 1393**, Relating to county regulation of aggregate quarry and pit safety.

The bill was read second time and was passed to engrossment by a viva voce vote.

#### **SENATE BILL 1393 ON THIRD READING**

Senator Shelley moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that S.B. 1393 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

#### **SENATE BILL 1436 ON SECOND READING**

On motion of Senator Lucio and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**S.B. 1436**, Relating to the management of certain funds of the watermaster operations of the Texas Water Commission.



The bill was read second time and was passed to engrossment by a viva voce vote.

#### **SENATE BILL 1436 ON THIRD READING**

Senator Lucio moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **S.B. 1436** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

#### **HOUSE JOINT RESOLUTION 57 ON SECOND READING**

On motion of Senator Harris of Dallas and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**H.J.R. 57**, Proposing a constitutional amendment repealing the constitutional provision limiting the consideration for which stock and bonds of a corporation may be issued.

The resolution was read second time and was passed to third reading by a viva voce vote.

#### **HOUSE JOINT RESOLUTION 57 ON THIRD READING**

Senator Harris of Dallas moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.J.R. 57** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The resolution was read third time and was passed by the following vote: Yeas 31, Nays 0.

#### **HOUSE BILL 638 ON SECOND READING**

On motion of Senator Carriker and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**H.B. 638**, Relating to combining certain county election precincts.

The bill was read second time and was passed to third reading by a viva voce vote.

(Senator Haley in Chair)

#### **HOUSE BILL 638 ON THIRD READING**

Senator Carriker moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 638** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**SENATE RULE 11.19 SUSPENDED**  
**(Posting Rule)**

On motion of Senator Henderson and by unanimous consent, Senate Rule 11.19 was suspended in order that the Committee on Jurisprudence might consider the following bills today:

**H.B. 979**  
**H.B. 831**

**SENATE RULE 11.19 SUSPENDED**  
**(Posting Rule)**

On motion of Senator Ratliff and by unanimous consent, Senate Rule 11.19 was suspended in order that the Committee on Education might consider the following bills and resolution today:

**S.J.R. 16**  
**S.B. 58**  
**S.B. 1489**  
**S.B. 7**

**SENATE BILL ORDERED NOT PRINTED**

On motion of Senator Ratliff and by unanimous consent, **S.B. 7** was ordered not printed.

**SENATE RULE 11.11 SUSPENDED**  
**(Posting Rule)**

On motion of Senator Carriker and by unanimous consent, Senate Rule 11.11 was suspended in order that the Subcommittee on Elections and Ethics might meet today.

**SENATE RULE 11.19 SUSPENDED**  
**(Posting Rule)**

On motion of Senator Nelson and by unanimous consent, Senate Rule 11.19 was suspended in order that the Committee on Administration might consider **S.C.R. 91** today.

**SENATE RULE 11.19 SUSPENDED**  
**(Posting Rule)**

On motion of Senator Parker and by unanimous consent, Senate Rule 11.19 was suspended in order that the Committee on Economic Development might consider the following bills today:

**H.B. 1077**  
**H.B. 2499**

**SENATE RULE 11.19 SUSPENDED**  
**(Posting Rule)**

On motion of Senator Sims and by unanimous consent, Senate Rule 11.19 was suspended in order that the Committee on Natural Resources might consider **S.B. 914** Thursday, May 13, 1993.

**SENATE RULE 11.19 SUSPENDED  
(Posting Rule)**

On motion of Senator Harris of Dallas and by unanimous consent, Senate Rule 11.19 was suspended in order that the Committee on State Affairs might consider S.B. 1463 tomorrow.

**NOTICE OF SESSION TO HOLD  
LOCAL AND UNCONTESTED BILLS CALENDAR**

Senator Harris of Dallas announced that a Local and Uncontested Bills Calendar had been placed on the Members' desks and gave notice that a Local and Uncontested Bills Calendar would be held at 10:00 a.m. tomorrow and that all bills would be considered on second reading in the order in which they are listed.

**MEMORIAL RESOLUTIONS**

**S.R. 911** - By Luna: In memory of Mrs. Ruby P. Cude of San Antonio.

**S.R. 916** - By Luna: In memory of Luis "Chito" Garza, Jr., of Alice.

**CONGRATULATORY RESOLUTIONS**

**H.C.R. 58** - (Armbrister): Recognizing October 11-15, 1993, and September 26-30, 1994, as Community Banking Week in Texas.

**H.C.R. 69** - (Armbrister): Recognizing the week of March 28 to April 3, 1993, as Distance Learning Week in Texas.

**H.C.R. 120** - (Sims): Commending the Women Airforce Service Pilots of World War II on the occasion of their 50th anniversary.

**S.R. 908** - By Turner: Congratulating Jason Lee Morris of Bryan on achieving the rank of Eagle Scout.

**S.R. 909** - By Shapiro: Recognizing James Russell Williams for his contributions to music education and his retirement from the Tyler Independent School District after 46 years of service.

**S.R. 910** - By Luna: Congratulating Mr. and Mrs. James T. Mason on the occasion of their 50th wedding anniversary.

**S.R. 912** - By Henderson: Recognizing the Hildebrandt Intermediate School for earning second place in the middle school division of the H.E.B./General Land Office Environmental Challenge.

**S.R. 913** - By Henderson: Congratulating Carol Sheridan McGee of Santa Fe, New Mexico, on the occasion of her 47th birthday.

**S.R. 914** - By Whitmire: Commending Sue Edwards of Galena Park on her accomplishments and on the publication of her book, Galena Park: The Community That Shaped Its Own History.

**S.R. 915** - By Luna: Congratulating Ivan Friedman on becoming a member of the State Bar of Texas.

**S.R. 917** - By Patterson: Congratulating George R. Willoughby on the occasion of his recent election as Mayor of Santa Fe, Texas.

**S.R. 918** - By Ellis: Congratulating the Reverend J. J. Roberson as he assumes the duties of president of the Baptist Ministers Association of Houston and Vicinity.

**S.R. 919** - By Barrientos: Congratulating the Pflugerville Lady Panthers Basketball Team for winning the District 14-5A championship.

#### RECESS

On motion of Senator Harris of Dallas, the Senate at 12:09 p.m. recessed until 10:00 a.m. tomorrow for the Local and Uncontested Bills Calendar.

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#### APPENDIX

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#### REPORTS OF STANDING COMMITTEES

The following committee reports were received by the Secretary of the Senate:

May 11, 1993

FINANCE — H.B. 1975, H.B. 1974, H.B. 1702, C.S.H.B. 85

NATURAL RESOURCES — C.S.S.B. 1129, C.S.S.B. 1030, H.B. 1491, H.B. 1818, H.B. 2489, H.B. 1684, H.B. 2705, C.S.H.B. 2647, H.B. 2620, H.B. 1287, H.B. 1262, S.C.R. 67, H.B. 2460, S.B. 1476, H.B. 346, C.S.H.B. 578

JURISPRUDENCE — C.S.S.B. 123, H.B. 2821, H.B. 1166 (Amended), H.B. 238, H.B. 253, H.B. 2827, H.B. 1779, H.B. 2856, H.B. 546 (Amended), S.B. 1482, S.B. 1474, C.S.S.B. 1431

SUBCOMMITTEE ON ELECTIONS AND ETHICS — C.S.S.B. 436

HEALTH AND HUMAN SERVICES — H.B. 1502, H.B. 1503, H.B. 2557, H.B. 1206, H.B. 1972, C.S.H.B. 1462, S.C.R. 80, C.S.S.B. 1180, C.S.S.B. 1033, S.B. 1472

ECONOMIC DEVELOPMENT — H.B. 1170, H.B. 2218, H.B. 2153, H.B. 1077, H.B. 32, C.S.H.B. 2005, C.S.H.B. 563, C.S.H.B. 2499, C.S.S.B. 629, C.S.S.B. 458

EDUCATION — C.S.S.B. 7

CRIMINAL JUSTICE — H.B. 1281, H.B. 116, H.B. 23, H.B. 148, S.C.R. 50, S.B. 165, C.S.S.B. 711, C.S.S.B. 1135, C.S.H.B. 472

JURISPRUDENCE — S.C.R. 82, S.B. 1461, H.B. 1447, H.B. 979, H.B. 1876, H.B. 1662, H.B. 392, H.B. 2018, H.B. 1252

CRIMINAL JUSTICE — H.B. 930

#### SENT TO GOVERNOR

(May 11, 1993)

S.B. 830